

# **EXHIBIT**

# **41**

Wolfgang Vorbeck August 10, 2005

<p>1 Volume: I Pages: 1 to 126  2 UNITED STATES DISTRICT COURT  3 DISTRICT OF MASSACHUSETTS  4 -----  5  6 BRAUN GmbH,  7 Plaintiff  8 v. Civil Action  9 RAYOVAC CORPORATION, No.  10 Defendant 03-CV-12428-WGY  11 -----  12  13 DEPOSITION of WOLFGANG VORBECK  14 Wednesday, August 10, 2005  15 9:23 a.m.  16 Dwyer &amp; Collora  17 600 Atlantic Avenue  18 Boston, Massachusetts  19  20  21  22  23  24 Melissa Z. Comins, RPR and CSR No. 132293</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX  2  3 Deposition of: WOLFGANG VORBECK Page  4 Direct Examination by Mr. Shimota.....5  5  6 EXHIBITS  7 No. Page  8 103 Subpoena.....9  9 104 Privelege log.....24  10 105 US patent No. 3,172,416.....47  11 106 US patent No. 6,698,437.....54  12 107 Braun theses Bates B005220 to B005277.....58  13 108 Documents Bates Nos. 1138 to 1145.....67  14 109 Documents B00136 to B00146.....67  15 110 Documents B00126 to B00135.....68  16 111 Documents B00126 to B00135 in German.....68  17 112 US patent No. 5,711,328.....69  18 113 Bates B001097 to B00114.....71  19 114 US patent No. 3,890,988.....90  20 115 US patent No. 5,649,556.....90  21 116 Documents B1069 to B1073.....93  22 117 Braun 00861.....107  23 118 Declaration.....111  24 119 B0243 to B0247.....113</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:  2  3 ROPES &amp; GRAY LLP  4 By: Dalila Argaez Wendlandt, Esq.  5 and Stanley D. Liang, Esq.  6 One International Place  7 Boston, Massachusetts 02110-2624  8 (617) 951-7000  9 Counsel for the Plaintiff  10  11 KIRKLAND &amp; ELLIS LLP  12 By: James A. Shimota, Esq.  13 200 East Randolph Drive  14 Chicago, IL 60601  15 (312) 861-2336  16 Counsel for the Defendant  17  18 ALSO PRESENT:  19  20 Lily Olm, Interpreter  21 Jason LaChapelle, Videographer.  22  23  24</p>	<p style="text-align: right;">Page 4</p> <p>1 EXHIBITS  2 No. Page  3 120 Answers to interrogatories.....116  4 121 B004615 to B004617.....118  5 122 Schematic B1064.....118  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24 (Original exhibits copied and attached.)</p>

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<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Here begins</p> <p>4 videotape No. 1 in the deposition of</p> <p>5 Wolfgang Vorbeck in the matter of Braun versus</p> <p>6 Rayovac in the United States District Court for the</p> <p>7 District of Massachusetts, Case No. 03-CV-12428-WGY.</p> <p>8 Today's date is August 10, 2005. The</p> <p>9 time on the video monitor is 9:24. The video</p> <p>10 operator today is Jason LaChapelle contracted by</p> <p>11 LegalLink Boston, 320 Congress Street, Boston,</p> <p>12 Massachusetts.</p> <p>13 This deposition is taking place at</p> <p>14 Dwyer &amp; Collora, 600 Atlantic Avenue, Boston,</p> <p>15 Massachusetts, and was noticed by James Shimoto and</p> <p>16 Kirkland &amp; Ellis.</p> <p>17 Counsel, please voice identify</p> <p>18 yourselves and state whom you represent.</p> <p>19 MR. SHIMOTO: James Shimoto of</p> <p>20 Kirkland &amp; Ellis appearing on behalf of Rayovac</p> <p>21 Corporation.</p> <p>22 MS. WENDLANDT: Dalila Wendlandt of</p> <p>23 Ropes &amp; Gray appearing on behalf of Braun GmbH.</p> <p>24 THE VIDEOGRAPHER: The court reporter</p>	<p style="text-align: right;">Page 7</p> <p>1 A. My address is Germany, the village is</p> <p>2 Idstein, ZIP code 65510, and the street is</p> <p>3 Pfahlgrabeustrasse No. 69.</p> <p>4 THE INTERPRETER: Do you want me to</p> <p>5 spell that?</p> <p>6 THE COURT REPORTER: Isn't that where</p> <p>7 you -- yes.</p> <p>8 (The witness talks</p> <p>9 with the interpreter.)</p> <p>10 THE INTERPRETER: The name of the</p> <p>11 location is spelled I-D as in David, S as in Sam, T</p> <p>12 as in Tom E-I-N.</p> <p>13 The name of the street is P as in</p> <p>14 Paul, F as in Frank, A as in Alpha, H as in Henry, L</p> <p>15 as in Lily, G as in George, R as in Richard, A as in</p> <p>16 boy, E as in England, N as in Nancy, S as in Sam, T</p> <p>17 as in Tom, R as in Richard A-S-S-E No. 69.</p> <p>18 Q. Have you ever been deposed before,</p> <p>19 Mr. Vorbeck?</p> <p>20 A. No.</p> <p>21 Q. Okay. Before we begin, there's a few</p> <p>22 preliminaries I'd like to go through.</p> <p>23 You understand that during the course</p> <p>24 of today, I'm going to ask you questions and you</p>
<p style="text-align: right;">Page 6</p> <p>1 today is Melissa Comins of LegalLink Boston.</p> <p>2 Would the translator please state your</p> <p>3 name for the record.</p> <p>4 THE INTERPRETER: It's the</p> <p>5 interpreter, my name is Lily Olm.</p> <p>6 THE VIDEOGRAPHER: And would the</p> <p>7 reporter please swear in the interpreter and the</p> <p>8 witness.</p> <p>9 (Interpreter sworn.)</p> <p>10</p> <p>11 WOLFGANG VORBECK,</p> <p>12 a witness called for examination by counsel for the</p> <p>13 Defendant, having been satisfactorily identified and</p> <p>14 duly sworn by the Notary Public, was examined and</p> <p>15 testified as follows:</p> <p>16</p> <p>17 DIRECT EXAMINATION</p> <p>18 BY MR. SHIMOTO:</p> <p>19 Q. Good morning.</p> <p>20 A. Good morning.</p> <p>21 Q. Would you please state your name for the</p> <p>22 record?</p> <p>23 A. My name is Wolfgang Vorbeck.</p> <p>24 Q. And would you also provide your address?</p>	<p style="text-align: right;">Page 8</p> <p>1 will provide me with answers to the best of your</p> <p>2 ability; is that correct?</p> <p>3 A. Yes, yes.</p> <p>4 Q. If during the course of the day you do not</p> <p>5 understand any of my questions, would you please</p> <p>6 tell me?</p> <p>7 A. Yes.</p> <p>8 Q. And if also at some point during the day</p> <p>9 you come to believe that your</p> <p>10 testimony -- that -- let me start again.</p> <p>11 If during the course of the day you</p> <p>12 come to believe that your prior testimony is either</p> <p>13 inaccurate or incomplete, would you also tell me?</p> <p>14 A. Yes.</p> <p>15 Q. And is there any reason that you can sit</p> <p>16 of -- think of sitting here today that you're unable</p> <p>17 to testify truthfully and accurately?</p> <p>18 A. No, there is nothing.</p> <p>19 MR. SHIMOTA: I'd like to mark as</p> <p>20 defendant's deposition Exhibit No. 3 defendant's</p> <p>21 notice of deposition pursuant to rule 30(b)(6),</p> <p>22 which I believe that you are designated to testify</p> <p>23 today on.</p> <p>24 (Pause.)</p>

2 (Pages 5 to 8)

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<p style="text-align: right;">Page 9</p> <p>1 (Exhibit No. 103 marked 2 for identification.)</p> <p>3 Q. Take whatever time you need to read the 4 document, but I'll just ask you: Have you ever seen 5 it before?</p> <p>6 A. Yes, I have seen it.</p> <p>7 Q. And when had you seen it?</p> <p>8 A. Well, I got it by fax two or three weeks, 9 it was -- look, it was a week before or July 20, so 10 approximately because I thought it -- the deposition 11 would be on July 20, and I thought it's a really 12 short term, so it must be five or six, 15 of July, 13 maybe, that's around the date.</p> <p>14 Q. And would you turn to the second page?</p> <p>15 A. Yes.</p> <p>16 Q. You'll see that there are a number of 17 topics there?</p> <p>18 A. Yes.</p> <p>19 Q. And have you reviewed those topics?</p> <p>20 A. Yes, yes.</p> <p>21 Q. And are you designated by Braun to testify 22 regarding those topics today?</p> <p>23 A. Yes.</p> <p>24 Q. And you understand with respect to the</p>	<p style="text-align: right;">Page 11</p> <p>1 Further, I talked today with 2 Mr. Sievers to answer the special item later on 3 regarding Mrs. Hubatsch and some French translation 4 issues, and I tried to get Mr. Hoeser on the phone 5 to clarify what I couldn't answer, so that what I 6 did for preparation.</p> <p>7 Q. What information did Mr. Hagele provide 8 you generally?</p> <p>9 A. Nothing, he said he could nothing tell me 10 in this regard.</p> <p>11 Q. And what information did Mr. Faulstich --</p> <p>12 A. The same.</p> <p>13 Q. And what information did Mr. Sievers 14 provide you?</p> <p>15 A. He provided me today with -- should I give 16 you -- it's the information what documents were 17 provided to the interpreter translator Mrs. Hubatsch 18 regarding the translation of the Braun patent, he 19 gave me some information this morning.</p> <p>20 Q. Did he provide you any documents?</p> <p>21 A. No, just information by telephone call 22 because it was not possible to reach Mrs. Hubatsch 23 earlier, she was on vacation, and so we -- he got 24 her on the phone yesterday or this morning.</p>
<p style="text-align: right;">Page 10</p> <p>1 list of topics that you are speaking not only on 2 behalf of yourself, but also the knowledge of Braun?</p> <p>3 A. Yes, I am the memory of Braun.</p> <p>4 Q. And what did you do to prepare yourself to 5 testify with respect to the topics listed in Exhibit 6 No. 103?</p> <p>7 A. Yes, yes, I went through such a stack of 8 papers, prosecution history of the two US patents, 9 prosecution history of the German patents, some 10 prior art literature and other papers, notes of the 11 deposition of Mr. Hoeser, notes of the deposition of 12 Mr. Braun, so practically all what is mentioned here 13 I went through that.</p> <p>14 Further, I asked several persons in 15 the company whether they could give me additional 16 assistance or additional information, I talked 17 with -- who was it?</p> <p>18 It was Mr. Hagele, who is now head of 19 the -- or director of the RD department shaver, I 20 talked with Mr. Faulstich, who is the product 21 program manager.</p> <p>22 I talked with Uwe Sievers, who is the 23 patent guy responsible for the current prosecution, 24 and I think that's it.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Is Mrs. Hubatsch a Braun employee?</p> <p>2 A. No, she is a --</p> <p>3 (The witness talks 4 with the interpreter.)</p> <p>5 THE INTERPRETER: She is a free-lance 6 translator.</p> <p>7 Q. Does she reside in Kronberg, to the extent 8 you know?</p> <p>9 A. No, she resides near Darnstadt, Darnstadt, 10 Erzhausen, Erzhausen, that's the village, Erzhausen, 11 E-R-Z hausen.</p> <p>12 THE INTERPRETER: E-R-Z-H-A-U-S-E-N, 13 and Darnstadt, that's D-A-R-N-S-T-A-D-T.</p> <p>14 Q. I actually got that one, I'll learn by the 15 end of this case.</p> <p>16 A. Okay.</p> <p>17 (Laughter.)</p> <p>18 Q. Aside from reviewing the documents we 19 discussed and speaking with Mr. Hagele, 20 Mr. Faulstich, Mr. Sievers and attempting to talk 21 with Mr. Hoeser, did you do anything else to prepare 22 for this deposition?</p> <p>23 A. Yes, yes, well, we -- I came across on 24 Sunday night, and on Monday, we met, we went</p>

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<p style="text-align: right;">Page 13</p> <p>1 with -- it was Dalila and it was Stanley, and we  2 went through the files and we looked at all the  3 questions and went through the prior art for about  4 three to four hours, and that was it.  5 Q. So this was on -- you met with Stanley and  6 Dalila on Monday?  7 A. On Monday, yes.  8 Q. And that was for three to four hours?  9 A. Yes.  10 Q. Did you meet with counsel in preparation  11 for this deposition yesterday?  12 A. No.  13 Q. If you could describe for me in general  14 your post -- do understand what I mean by the term  15 high school in the United States terms?  16 A. Yes, yes.  17 Q. Okay, your post high school education?  18 A. So after high school, I started studying  19 physics at University of Mainz.  20 THE INTERPRETER: M-A-I-N-Z.  21 A. And I made my diploma in about '78, so  22 that was diploma physics, I don't know the English  23 translation, and afterwards, I made my Ph.D or so in  24 physics, nuclear physics, and I finished university</p>	<p style="text-align: right;">Page 15</p> <p>1 responsibilities within the patent department?  2 A. Well, I was responsible for -- for  3 appli- -- filing, or drafting and filing  4 applications on some sensors, on -- what  5 else -- on --  6 (The witness talks  7 with the interpreter.)  8 THE INTERPRETER: Catali- -- catalyst  9 technology.  10 A. Catalyst -- so -- so -- and there I  11 drafted applications, I got -- so the older person  12 in that patent department gave me some information,  13 train me, so I got -- in this regard, I got some  14 training, but not a degree at Bosch.  15 Q. Let me see if I understand you. In  16 order -- when you're working at Bosch, you would  17 work on writing the applications?  18 A. Yes, writing the applications or  19 prosecuting the applications.  20 Q. Okay. Let me see. In Germany, do you  21 need a legal degree or a degree from a university in  22 order -- in law in order to interact with the German  23 patent office?  24 A. It depends, if you are in your function as</p>
<p style="text-align: right;">Page 14</p> <p>1 in 1982.  2 Q. And following the receipt of your Ph.D,  3 where did you come to be employed?  4 A. With a company Bosch, Bosch, it's  5 automotive supplier in Stuttgart, I started in the  6 patent department.  7 Q. And how did you come to work in the patent  8 department?  9 A. Well, it was --  10 (The witness talks  11 with the interpreter.)  12 THE INTERPRETER: It was just by  13 accident.  14 A. More important was the company Bosch had  15 some very good reputation in Germany, and so I tried  16 to work in patents and --  17 Q. Okay, I understand. Do you need to -- in  18 Germany in general, do you need to receive any legal  19 or formal legal education to work in patents?  20 A. Yes.  21 Q. And when you came to work at Bosch, had  22 you received --  23 A. No, nothing.  24 Q. So what was your -- what were your</p>	<p style="text-align: right;">Page 16</p> <p>1 an employee of the company, you can represent the  2 company as an employee without any legal degree, but  3 if you are outside counsel, outside lawyer,  4 then -- if you want -- if you are not an employee of  5 the company, then you have to have a degree to  6 represent the company. You understand that?  7 Q. I understand.  8 A. Okay.  9 Q. How long did you work for Bosch?  10 A. Exactly three years, to 1985.  11 Q. And after you left Bosch, when -- where  12 did you go next?  13 A. To the company Braun AG at that time,  14 first of July 1985 I started my job at Braun.  15 Q. And what was your position at Braun at  16 that time?  17 A. I was a patent specialist.  18 Q. And what were your responsibilities as  19 patent specialist?  20 A. At that time, I was responsible for oral  21 care and oral care -- drafting patents applications  22 prosecution for oral care appliances and hair care  23 appliances.  24 Q. And how long were you responsible for oral</p>

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<p style="text-align: right;">Page 17</p> <p>1 care and hair care applications?</p> <p>2 A. For oral care, I was responsible until end</p> <p>3 of 2002, and hair care, I can't really remember,</p> <p>4 that's eight, nine, ten years ago, so it was</p> <p>5 approximately 1995.</p> <p>6 Q. Did your -- did your responsibilities for</p> <p>7 patents on particular products expand?</p> <p>8 A. Yes, in -- in 1980 -- end of 1987, I went</p> <p>9 to Munich to take the German patent attorney</p> <p>10 diploma, and end of 1989, I'm not sure whether 1989</p> <p>11 or 1990, I took the European patent law degree, so</p> <p>12 from the legal side, this was -- or from the legal</p> <p>13 education, this was a step forward.</p> <p>14 And after having got the German patent</p> <p>15 lawyer degree, I had in addition at that time look</p> <p>16 for oral care for epilation devices, so these are</p> <p>17 not shavers, but hair pluckers, we also call them</p> <p>18 hair pluckers.</p> <p>19 Q. Did there come a time when you became</p> <p>20 responsible for the prosecution of patents related</p> <p>21 to shavers?</p> <p>22 A. Never.</p> <p>23 Q. When you were studying to receive your</p> <p>24 diplomas or degrees in both German patent law and</p>	<p style="text-align: right;">Page 19</p> <p>1 Dietrich Klauer?</p> <p>2 A. Yes, I know him personally.</p> <p>3 Q. Is it correct that Mr. Klauer is now</p> <p>4 deceased?</p> <p>5 A. Yes, in 2000.</p> <p>6 Q. And when did you first meet Mr. Klauer?</p> <p>7 A. Well, he was already in the patent</p> <p>8 department when I joined the patent department, so I</p> <p>9 worked with him together for about 15 years, he was</p> <p>10 a colleague of me.</p> <p>11 Q. So Mr. Klauer was working at Braun at</p> <p>12 least in 1985?</p> <p>13 A. Yes, I think he started 1975 or around</p> <p>14 that, I'm not sure, but he was a long time before me</p> <p>15 in the patent department employed.</p> <p>16 Q. And what were -- to the extent you recall,</p> <p>17 what were Mr. Klauer's responsibilities?</p> <p>18 A. He was, at the time I joined the patent</p> <p>19 department, he was responsible for product range of</p> <p>20 shavers and epilation devices.</p> <p>21 No, that's not correct because in</p> <p>22 1985, we did not even have a product epilation</p> <p>23 device, so he was responsible for shavers.</p> <p>24 Q. And would he have become responsible for</p>
<p style="text-align: right;">Page 18</p> <p>1 European patent law, did you ever receive any</p> <p>2 training with respect to or was there any discussion</p> <p>3 of US patent law?</p> <p>4 A. Well, a side aspect, and not during the</p> <p>5 European exam or preparation for the exam, but to</p> <p>6 some extent, you hear about US patent law when you</p> <p>7 prepare for the German patent lawyer, so something</p> <p>8 about that, and in the meantime, I have 23 years'</p> <p>9 experience in patent matters, trademark matters and</p> <p>10 that stuff, and so today, I have a bit more</p> <p>11 experience also in the US patent law, but I'm not an</p> <p>12 expert and I'm not US patent attorney.</p> <p>13 Q. So is it fair to say that Braun relies</p> <p>14 upon outside US counsel to handle --</p> <p>15 A. Yes, that's true because we internal</p> <p>16 patent lawyers cannot represent the company for US</p> <p>17 PTO, for instance, or for the Japanese patent</p> <p>18 office.</p> <p>19 We can represent for the European</p> <p>20 patent office, German patent office, and so we need</p> <p>21 outside experts, US patent lawyers, Japanese patent</p> <p>22 lawyers, Russian patent lawyers, to prosecute the</p> <p>23 applications in these countries.</p> <p>24 Q. Do you know the name I believe it's Hans</p>	<p style="text-align: right;">Page 20</p> <p>1 epilation devices around the time that Braun</p> <p>2 purchased Silk-Epil?</p> <p>3 A. Silk-Epil, yes, so at that time, he became</p> <p>4 also responsible for that because epilation devices</p> <p>5 and shavers were one product field, or Braun was</p> <p>6 structured that these both devices were in one</p> <p>7 product area.</p> <p>8 Q. And to the extent you recall, what was</p> <p>9 Mr. Klauer's educational background?</p> <p>10 A. He was a mechanical engineer, and that's</p> <p>11 it, he had no degree as a patent lawyer for the</p> <p>12 German or European patent office.</p> <p>13 Q. Do you know whether Mr. Klauer had</p> <p>14 received any patents at Braun?</p> <p>15 A. As an inventor?</p> <p>16 Q. As an inventor, yes.</p> <p>17 A. I think he -- he was involved in some -- a</p> <p>18 few cases, yes, I think he was, he was an inventor</p> <p>19 in few shaver -- shaver applications or shaver</p> <p>20 patents.</p> <p>21 Q. Do you know if he was the inventor in any</p> <p>22 US patents or --</p> <p>23 A. I can't tell you, no, I have no idea.</p> <p>24 Q. Sure.</p>

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<p style="text-align: right;">Page 21</p> <p>1 A. Maybe the -- the application was also 2 filed in -- in the US, but I would have prepared 3 if -- 4 Q. I understand. 5 A. -- so I can't answer that question. 6 Q. If you could direct your attention to 7 topic No. 3. 8 A. Yes. 9 Q. It states, Therefore, the asserted 10 patents, the identities of all individuals covered 11 by 37 C.F.R., section 1.56 (c), can you tell me who 12 all those individuals would be? 13 A. Yes, so I read this paragraph, and I think 14 these are the invent -- mainly the inventors and the 15 attorneys who prosecuted the cases. Am I right? 16 Q. That would be correct. 17 A. So inventor is Mr. Braun, he is one of the 18 individuals, then Mr. Klauer, who prosecuted that 19 within the company, and for the US case, we had, as 20 usual, Fish &amp; Richardson and Eric Prah was the 21 attorney there. 22 And when I went through the files, I 23 also -- I saw that also another US attorney was 24 involved, and that was I think Phylis Kristal, I saw</p>	<p style="text-align: right;">Page 23</p> <p>1 signature, and that was my signature at that time. 2 I saw it, but I had nothing to do with the case. 3 The other signature was that of 4 Hans Dieter Klauer, and he prosecuted the case, I 5 just signed to instruct, for instance, to give the 6 Fish &amp; Richardson instructions to prosecute the case 7 that involves money and so on, so we needed two 8 signatures. 9 Q. Okay. So I understand correctly, under 10 German law, in order to give authority to 11 Fish &amp; Richardson to do things, there needed to be 12 two signatures? 13 A. Yes, okay, that's -- one of those was my 14 one, but I was not material involved in that case, I 15 just signed it. 16 Q. So at least with respect to you, you 17 wouldn't have been speaking with Mr. -- with 18 Gebhard Braun, for example, regarding prosecution? 19 A. No, no, I think I didn't know him before, 20 so -- before this case came up. 21 Q. So is it correct that the first time you 22 met Mr. Braun -- 23 A. I don't know whether I met him before, but 24 he is retired since a few years and I had nothing to</p>
<p style="text-align: right;">Page 22</p> <p>1 her signature below some of the papers. 2 Q. Were you involved in the prosecution of 3 the patents in suit? 4 A. No, I was not responsible for shavers 5 regarding patent matters. 6 Q. So did you -- you did not communicate at 7 all with Fish &amp; Richardson regarding the prosecution 8 of the patents in suit? 9 A. I saw under a few of those letters is also 10 my signature, but that depends or that is a problem 11 regarding German -- 12 (The witness talks 13 with the interpreter.) 14 THE INTERPRETER: Commercial law in 15 Germany. 16 A. Because you need, according to that law 17 and our internal structure is to have two signatures 18 below, and one is -- 19 (The witness talks 20 with the interpreter.) 21 THE INTERPRETER: It's a procuration, 22 which means that you give somebody the power of 23 attorney to act in your name. 24 A. So -- and one should be this PPA</p>	<p style="text-align: right;">Page 24</p> <p>1 do with the shaver department and we are about 2000 2 people at the Kronberg facility or location, so you 3 do not know each and every person, so I -- 4 Q. Sure. 5 A. -- maybe I've seen him, but I didn't know 6 his name up to that time, and I couldn't connect the 7 face with the name. 8 Q. Had you read -- well, in the 1994-1995 9 time frame, had you read the patent applications 10 for -- 11 A. No, no. 12 Q. I'd like to mark as defendant's deposition 13 Exhibit No. 104 the privilege log produced by Braun 14 in this litigation. I'm just going to ask you about 15 a few names on this document. 16 (Exhibit No. 104 marked 17 for identification.) 18 Q. If you could turn to page 3, if you see 19 there, there is the name of P. Sartorius? 20 A. Yes. 21 Q. Can you tell me who Mr. Sartorius is? 22 A. Yes, I know him personally, he -- it's 23 Peter Sartorius, he lives near southern of us, near 24 Heidelberg Mannheim area, and he is a patent</p>

6 (Pages 21 to 24)

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1 attorney, a German patent attorney and European  
 2 patent attorney.  
 3 He runs a private practice, or at that  
 4 time, he started to run a private practice.  
 5 Formerly, he worked for German company  
 6 John Deere, not -- it's US company, but German  
 7 branch, I think it was John Deere, and he at that  
 8 time Dieter Klauer instructed him to draft some  
 9 patent applications.  
 10 Also these was applications on the  
 11 basis of some venture disclosures or information, so  
 12 he is an outside patent attorney.  
 13 Q. Does Braun still have a relationship with  
 14 Mr. Sartorius?  
 15 A. Not at the moment. We -- at that time, it  
 16 was the philosophy of Braun or the -- regarding the  
 17 work in the patent department to do most of the work  
 18 in-house, and we needed only Peter Sartorius or  
 19 others to -- to --  
 20 (The witness talks  
 21 with the interpreter.)  
 22 THE INTERPRETER: To help us deal with  
 23 the last details.  
 24 A. No, we have not always continuous work,

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1 some --  
 2 (The witness speaks  
 3 with the interpreter.)  
 4 THE INTERPRETER: Oh, if they have too  
 5 much, to deal with the overload of work.  
 6 A. So this was at that time, I guess, we took  
 7 Peter Sartorius because Mr. Klauer had a lot to do  
 8 in other areas, but I don't know for certain why  
 9 we -- why we used him for this -- for these two  
 10 cases especially.  
 11 Q. So did Mr. Sartorius draft the German  
 12 counterparts to the US patent applications?  
 13 A. Yes, yes.  
 14 Q. Do you know how he was able  
 15 to -- what -- let me start again.  
 16 Did Mr. Sartorius meet with Mr. Braun  
 17 in order to prepare the patent applications?  
 18 MS. WENDLANDT: Objection, go ahead  
 19 and answer.  
 20 A. I can't tell that, but I believe  
 21 Mr. Sartorius will have spoken with Mr. Klauer and  
 22 will have got the information, the invention  
 23 disclosure and maybe some prior art or whatever,  
 24 that's the usual way we handle it, to give the

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1 written description, to give some prior art, if  
 2 there is any, or if we are aware of any.  
 3 And sometimes if you have three or  
 4 four or five cases, it's better to -- to -- that the  
 5 attorney comes to the company with us and you have  
 6 a talk together.  
 7 And maybe then also the inventor will  
 8 be involved, but it was not -- I don't know it, but  
 9 it was not usual to have the outside attorney put  
 10 together with the inventor, only in cases there are  
 11 misunderstandings or something like that or someone  
 12 needs more information.  
 13 Q. Well, do you know with respect to the  
 14 prosecution of the patents which are at issue here  
 15 if Mr. Sartorius came to Braun and met with the --  
 16 A. To Mr. Braun or Braun the company Braun?  
 17 Q. Well, if Mr. Sartorius came to the company  
 18 Braun and then met with Mr. Gebhard Braun?  
 19 A. I don't know it, but can I say what I  
 20 guess?  
 21 MS. WENDLANDT: No.  
 22 A. Good.  
 23 Q. Well, I just want to be -- I want to be  
 24 clear.

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1 A. So I don't know whether Peter Sartorius  
 2 met Mr. Braun or not.  
 3 Q. And when I'm -- maybe I should clarify.  
 4 When I'm asking you that question, I'm also asking  
 5 with respect to Braun's knowledge, does Braun know  
 6 whether Mr. Sartorius met with Mr. Gebhard Braun?  
 7 A. I don't think so because the only person  
 8 who could definitely say that is Mr. Klauer, if he  
 9 would not -- would not have died, and I looked at  
 10 the files and who could also testify that would be  
 11 Mr. Gebhard Braun, and I think he was deposition, so  
 12 I can't --  
 13 Q. Did Braun -- Braun -- pardon me.  
 14 Did Braun attempt to collect documents  
 15 from Mr. Sartorius related to his work on the  
 16 patents in suit?  
 17 A. Mr. Gebhard Braun?  
 18 Q. No, did the company Braun contact  
 19 Mr. Sartorius regarding his work on the patents in  
 20 suit?  
 21 MS. WENDLANDT: Objection, you can go  
 22 ahead and answer if you know.  
 23 A. Well, maybe I -- so when Mr. Sartorius has  
 24 drafted the applications on the basis of whatever

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1 information, then he will have sent these drafts to  
 2 Mr. Klauer, Mr. Klauer reviewed it and maybe there  
 3 were some misformulated claims or some additional  
 4 disclosure, and there was communication between  
 5 Mr. Klauer and Mr. Sartorius, and then maybe  
 6 the -- the draft was revised and then it was filed  
 7 with the German patent office, that's how these  
 8 things work usually.  
 9 Q. I want to be clear. What I'm asking is  
 10 now in the 2003-2005 time period during this  
 11 litigation --  
 12 A. Yes.  
 13 Q. -- did the company Braun make any effort  
 14 to contact Mr. Sartorius?  
 15 A. No, no, no.  
 16 Q. So I take it you did not speak with  
 17 Mr. Sartorius in preparation for this deposition?  
 18 A. No, but I spoke with him when we met at a  
 19 seminar, but not about this case.  
 20 Q. Sure.  
 21 A. The patent community is not so big, we are  
 22 1,500 German patent lawyers and to meet each other,  
 23 to -- some events, and then I saw also the last two  
 24 years Peter Sartorius.

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1 Q. If Braun asked Mr. Sartorius, do you  
 2 believe that he would provide the files that he  
 3 retained, to the extent there are any?  
 4 A. I think so, yes. Why not?  
 5 Q. If you could look at the bottom of  
 6 page 3 --  
 7 A. Yes.  
 8 Q. -- the last -- second to last entry,  
 9 there's listed an A. Dietrich?  
 10 A. A. Dietrich, that's -- oh, that's a woman  
 11 which worked in the patent department, and she  
 12 unfortunately died also four or five years ago.  
 13 She had an accident, car accident,  
 14 so -- and she made the docketing of our files,  
 15 she -- she run the computer system to docket the  
 16 files and that stuff, so she had nothing to do with  
 17 the actual patent work, only --  
 18 Q. She was -- was she a secretary of some  
 19 type?  
 20 A. Yes, assistant, yes.  
 21 Q. Do you know whose assistant she was or was  
 22 she just an assistant for the entire department?  
 23 A. No, she had -- she had the function to  
 24 look over the terms and to -- to make the docketing

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1 of the files, to put the file numbers and all that  
 2 stuff in our computer system, so she reported I  
 3 think to the head of the patent department at that  
 4 time was Dieter Klauer.  
 5 Q. If you could look at the next to last  
 6 entry, there's listed a C. Hirsch.  
 7 A. Yes, that's also a secretary, fortunately,  
 8 she has not died, she still lives and she still is  
 9 in the patent department as an assistant.  
 10 Q. Okay. Please turn the page.  
 11 A. Yes.  
 12 Q. Page 4, look at the third entry, for  
 13 example, it's listed yourself and Mr. Klauer.  
 14 A. Yes.  
 15 Q. Do you believe this is the type of  
 16 situation where you would have --  
 17 A. Yes, I think so.  
 18 Q. Okay, as we discussed previously. There's  
 19 listed also at approximately the sixth entry an  
 20 I. Heldmann.  
 21 A. Yes, she was a --  
 22 (The witness talks  
 23 with the interpreter.)  
 24 THE INTERPRETER: She was a temporary

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1 assistant.  
 2 A. And she worked for some time in the patent  
 3 department, and -- but it was for one or two years,  
 4 I think so, and then she went to -- I don't know  
 5 where she went.  
 6 Q. Okay. The next entry, there's listed a  
 7 G. Haunold.  
 8 A. Yes, Haunold, he's located in Austria and  
 9 he is a translator especially for Japanese into  
 10 German and French or English language, I don't know.  
 11 Q. Did Mr. Haunold provide any translation  
 12 services in connection with the patents in suit?  
 13 A. Maybe, I can't tell you, but usually  
 14 we -- we used at that time and use today Mr. Haunold  
 15 when we need translations from the Japanese into  
 16 English or German language, so -- and we had here  
 17 also a Japanese parallel of prosecution running.  
 18 It's likely that there has been some  
 19 Japanese literature cited as prior art and where  
 20 there's no foreign counterpart which is readable for  
 21 us, then we have that language translated, so it's  
 22 nothing unusual.  
 23 Q. Okay. If you can turn to the next page,  
 24 in the second entry, well, first, there's listed

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1 there in the second entry E. Cordes.  
 2 A. Yes, that's my secretary.  
 3 Q. Also in the -- farther over, there's  
 4 listed a notification of invention. Do you see  
 5 that? And it's the same entry.  
 6 A. Yes, yes.  
 7 Q. What is a notification of invention, is  
 8 that --  
 9 A. It's an IDS, invention disclosure.  
 10 According to German inventors law, you have to  
 11 disclose, if you believe you have made an invention,  
 12 you have to disclose that to your employer, and  
 13 you -- and there are several rules what you have to  
 14 describe the invention, you have describe prior art  
 15 and all that stuff, and that is called a  
 16 notification of invention or invention disclosure.  
 17 Q. And that's required by German law? Well,  
 18 let me -- excuse me. German law requires the filing  
 19 of a notification of invention?  
 20 A. Yes.  
 21 Q. And to the extent you know, why does  
 22 German law require the filing of a notification of  
 23 invention?  
 24 A. This inventors law comes out of the time

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1 of 1930, 1940 in the war times, and I have no idea  
 2 why they put this phrase in it.  
 3 Q. Well, do you know what the purpose of the  
 4 legal requirement of the notification of invention  
 5 is under German law?  
 6 MS. WENDLANDT: Objection.  
 7 A. No.  
 8 Q. Well, at Braun, why do employees file a  
 9 notification of invention?  
 10 A. Besides the law, they have a -- usually a  
 11 preamble in their contract that if they think  
 12 they've made an invention, they've disclosed this  
 13 invention to the employer, that's in the -- in their  
 14 contract because the company does not want that  
 15 inventions are -- or that inventions cannot be filed  
 16 since -- an employee believes he must not tell this  
 17 fact to the company.  
 18 Q. So is the contractual requirement so that  
 19 the employee doesn't try to take the invention for  
 20 himself?  
 21 A. Yes.  
 22 Q. Is the purpose of the German law, to the  
 23 extent you know, also to ensure that the employee  
 24 does not take the invention for himself away from

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1 the employer?  
 2 MS. WENDLANDT: Objection.  
 3 A. The -- to make it simple, the structure of  
 4 the German inventors law is as follows: If an  
 5 invention has been disclosed to the company, then  
 6 the company is, from that point of time, four  
 7 months, to lead over the rights on the invention  
 8 from the inventor to the company.  
 9 If the company misses to lead over the  
 10 rights within this four months' term, the rights  
 11 stay with the inventor, so this four months' term is  
 12 a very, very strict term, you cannot --  
 13 (The witness talks  
 14 with the interpreter.)  
 15 THE INTERPRETER: Extend.  
 16 A. You cannot extend it, nothing, and in case  
 17 the company leads over the rights from the inventor  
 18 to the -- on the invention from the inventor to the  
 19 company, then the inventor will get a right for  
 20 compensation.  
 21 So he gives away the right on the  
 22 invention, which he originally has as an  
 23 employer -- employee person, but he gets a claim  
 24 against the company to get some compensation.

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1 Q. Okay.  
 2 A. So that's -- and maybe that's a reason why  
 3 it is said you have to -- to -- in the law, it  
 4 is -- there's pre -- there is what clause that you  
 5 have to disclose --  
 6 (The witness talks  
 7 with the interpreter.)  
 8 THE INTERPRETER: To expedite.  
 9 A. Immediately the invention to the company,  
 10 that's maybe an explanation.  
 11 Q. How does, in Germany or at Braun, how does  
 12 the -- an employee typically give his rights and  
 13 invention to his employer?  
 14 A. Oh, he doesn't give -- he has no chance.  
 15 If the employer wants to have the right, he just  
 16 says, Well, I take the right from you, he has no  
 17 chance to say no, okay, so it's --  
 18 (The witness talks  
 19 with the interpreter.)  
 20 THE INTERPRETER: It is a one-sided  
 21 type of -- a type of transaction. There is no  
 22 two-way structure possible.  
 23 A. It's not -- it's not an agreement where  
 24 two parties agree that one party will get the right

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<p style="text-align: right;">Page 37</p> <p>1 on the invention.</p> <p>2 The law says the company has just to</p> <p>3 say we want to have the right, and the inventor can</p> <p>4 say yes or no or whatever, the right transfers from</p> <p>5 the inventor over to the company, so he has</p> <p>6 no -- the inventor does not have to agree.</p> <p>7 Q. So just let me make sure I'm</p> <p>8 reciting -- so within four months of a filing a</p> <p>9 notification of invention, if an employer wants the</p> <p>10 rights within four months, they need to file an</p> <p>11 application with the German patent office?</p> <p>12 A. No, from the date when the company</p> <p>13 receives the invention disclosure --</p> <p>14 (The witness talks</p> <p>15 with the interpreter.)</p> <p>16 THE INTERPRETER: The date of entry,</p> <p>17 the date of issue.</p> <p>18 A. No, the date when the --</p> <p>19 THE INTERPRETER: Entry.</p> <p>20 A. IDS, the written IDS, written and signed</p> <p>21 IDS receives the company, normally the patent</p> <p>22 department, from this point of time four months, the</p> <p>23 company has four months' time to declare that the</p> <p>24 rights have to be transferred from the inventor to</p>	<p style="text-align: right;">Page 39</p> <p>1 So if the invention -- if you have a</p> <p>2 patent on the invention and the invention is not</p> <p>3 used, the compensation is about a thousand euros at</p> <p>4 the moment, \$1,200 for all inventors, and if the</p> <p>5 invention is used, there is some kind of royalty</p> <p>6 like model, and that could be less or more, it</p> <p>7 depends how much products are sold or what are the</p> <p>8 costs of the invention involved and all that stuff,</p> <p>9 so it's -- it's -- you can read books like this high</p> <p>10 (indicating) how to competence inventors, so you are</p> <p>11 lucky that you have not this clause, you have only</p> <p>12 the inventors dollar, I think.</p> <p>13 Q. It used to be that way.</p> <p>14 A. Yes.</p> <p>15 Q. Has -- I guess with respect to the patents</p> <p>16 in suit, has Braun the company compensated</p> <p>17 Gebhard Braun?</p> <p>18 A. Yes, but not filing because it's ongoing I</p> <p>19 think every one or two years, it's again calculated</p> <p>20 what came in addition because the inventions are</p> <p>21 used here in this special regard, and so he has got</p> <p>22 compensation.</p> <p>23 Q. Do you know how much he's been</p> <p>24 compensated?</p>
<p style="text-align: right;">Page 38</p> <p>1 the company.</p> <p>2 Q. I see. And --</p> <p>3 A. So if you have a stamp on the IDS, and we</p> <p>4 have here one IDS in the files, and from that stamp,</p> <p>5 four months in the future, that's the term the</p> <p>6 company has.</p> <p>7 Q. How does Braun then declare to an employee</p> <p>8 that they have chosen to take the rights?</p> <p>9 A. Well, we send them a letter and say well,</p> <p>10 we lead over the rights to the company.</p> <p>11 Q. And once that occurs, you mentioned that</p> <p>12 there is compensation to the employee; is that</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. How does Braun compensate inventors?</p> <p>16 A. It depends whether the -- firstly, you</p> <p>17 have to file an application, the IDS is not</p> <p>18 sufficient, so you can only be compensated for a</p> <p>19 monopoly right, if you have no monopoly right, the</p> <p>20 inventor will not get compensation.</p> <p>21 So there should be at least an</p> <p>22 application, there should be better, even better, a</p> <p>23 patent, a grounded patent, and then it depends</p> <p>24 whether the invention is used or not used.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Maybe 20, 30, 20 to 30, maybe 40,000</p> <p>2 euros, I don't know, but I'm not sure, but I think</p> <p>3 it's in this area.</p> <p>4 Q. Do you know if you had to find out, how</p> <p>5 would you find out how much Mr. Braun --</p> <p>6 A. I would ask one of my assistants.</p> <p>7 Q. Do you know if records are kept with</p> <p>8 respect to disbursements to him?</p> <p>9 A. Yes.</p> <p>10 Q. And what do those records look like?</p> <p>11 A. The records regarding inventors</p> <p>12 compensation?</p> <p>13 Q. Well, more particularly, the records</p> <p>14 regarding -- well, in general, but what would the</p> <p>15 records regarding compensation to Mr. Braun look</p> <p>16 like?</p> <p>17 MS. WENDLANDT: Objection.</p> <p>18 A. So each -- each person at the Braun who</p> <p>19 made inventions has a file, and there are some</p> <p>20 persons who have 20, 30, 40 patent applications or</p> <p>21 patents, others have only one or two, and so it</p> <p>22 depends whether the patents or patent applications</p> <p>23 are used or not used, so one's on the one hand you</p> <p>24 have a standard compensation.</p>

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<p style="text-align: right;">Page 41</p> <p>1 The other is a use dependent 2 compensation, and really these files look like we 3 got the numbers from other departments, how many 4 products were sold, what are the costs of that 5 switch with subject to the invention or whatever, 6 then you have some four years and you have to just 7 to calculate it, and at the end, you have a letter 8 which says well, at the time from that to that, you 9 receive compensation for X euros or whatever, and 10 that's it, so -- so -- so it's -- 11 Q. Okay. So -- so essentially you'd send a 12 letter to Mr. Braun and presumably a check along 13 with that? 14 A. No, it's -- it's done not by check, 15 we -- there are tax issues in addition, this 16 something is also taxable and Mr. Braun is -- 17 (The witness talks 18 with the interpreter.) 19 THE INTERPRETER: He is retired. 20 A. He is retired, so it's not so easy, but I 21 think that he will get it on his account, we 22 just -- 23 (The witness talks 24 with the interpreter.)</p>	<p style="text-align: right;">Page 43</p> <p>1 compensating Dr. Pahl with respect to -- 2 A. Well, we are thinking about that. 3 MS. WENDLANDT: Objection, go ahead. 4 A. Sorry, we are thinking about that, and he 5 has been cited in the US case as an inventor, and 6 we -- and I think we have to do something in this 7 regard, but we haven't compensated him up to now. 8 So he has not received any money with 9 respect to these two inventors compensation with 10 respect to these two cases. 11 Q. Has Braun discussed with Mr. Braun, 12 Mr. Gebhard Braun returning some of the money that 13 he has been paid with respect to -- 14 A. That's not discussable because the German 15 inventors law says once you have paid inventors 16 compensation, that's not returnable. 17 Q. So even if there is incorrect 18 inventorship, money cannot be returned? 19 A. No. 20 Q. And how long does the -- how long does the 21 right to compensation last in the case of Mr. Braun? 22 A. As long -- 23 MS. WENDLANDT: Objection. 24 A. As long as the monopoly will be there, so</p>
<p style="text-align: right;">Page 42</p> <p>1 THE INTERPRETER: Transferred. 2 A. Transferred on his account. He will not 3 get a check, that's unusual. 4 Q. And does the -- how often -- how often 5 are -- would these letters be sent? 6 A. Well, they should be sent regularly, and 7 I'm now -- since three years head of the patent 8 department, and I'm now at the process we do that 9 regularly every two years, but we are not still at 10 the end. 11 Inventors compensation is time 12 consuming, and if the attorneys have to move or 13 shift some work, this can be shifted relatively 14 easily. 15 The rest you have other terms which 16 cannot be extended or whatever, so inventors 17 compensation is an issue which I want to have -- be 18 in contact with a bit more regularly, and we are 19 just in the process, and I think it would be 20 appropriate every two years. 21 Q. Has Braun compensated Dr. Pahl at all with 22 respect to the patents in suit? 23 A. No, no. 24 Q. Does Braun have any intention of</p>	<p style="text-align: right;">Page 44</p> <p>1 until the end of the patent lifetime, if we have the 2 patents up to the end of lifetime. 3 MR. SHIMOTO: I would like to request 4 the copies of the letters sent to Mr. Braun 5 regarding compensation, production of those 6 documents. 7 MS. WENDLANDT: Sure, I think that 8 they have been produced, if they haven't we'll get 9 them to you if they are not privileged. 10 MR. SHIMOTO: If I'm not -- if I'm 11 mistaken, then we would request them. 12 Q. Look at the bottom of page 5 where there's 13 an entry there for R. Bader, I believe, to 14 M. Fullgrave? 15 A. I'm not sure. We have a Mr. Bader in the 16 shaver department, but I don't know whether -- I 17 think that person writes with two A, I'm not 18 certain, and Fullgrave, no, maybe I've heard these 19 names, but I have no idea to -- to what person I 20 should connect the names. 21 Q. You see the entry there is at June 12 of 22 2003? 23 A. Mm-hmm. 24 Q. Did Braun anticipate litigation with</p>

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<p style="text-align: right;">Page 45</p> <p>1 Remington in June of 2003 with respect to the 2 patents in suit? 3 MS. WENDLANDT: Objection. 4 A. I can't -- we anticipated litigation when 5 Remington launched their product, and I've 6 not -- I'm not aware of the exact date when that 7 was. 8 Q. Okay. So it's your recollection that 9 Braun began to think of litigation with Remington 10 when Remington launched its product commercially? 11 MS. WENDLANDT: Objection. 12 A. Yes, before we didn't know. Before we 13 didn't know that that would be a case of 14 infringement or of potential infringement. 15 Q. Turn to page 7. 16 A. Mm-hmm. 17 Q. On the third to last entry, there's listed 18 a T. Wieske. 19 A. Yes, Wieske, he is a patent attorney who 20 worked for Braun about two to three years, and he 21 was at that time responsible for shaver electronics, 22 so only the -- not the mechanical of the electronic 23 part, and -- but he was only two -- two, two and a 24 half years with the company, and then he went to</p>	<p style="text-align: right;">Page 47</p> <p>1 nothing, but there has been or there must have been 2 some prior art search because in the original patent 3 application, a US document was cited as prior art 4 and I have no idea how Dieter Klauer, and he must 5 have found it, I guess, maybe he conducted a search 6 or -- but we have no -- no -- no indication 7 that -- so we have no files and I can't tell that. 8 Q. So -- and I can mark that patent, if it 9 would be helpful to you. 10 (Pause.) 11 MR. SHIMOTO: Let's mark it as 12 defendant's deposition Exhibit No. 105, US patent 13 No. 3,172,416. 14 A. Yes. 15 Q. There you go. 16 (Exhibit No. 105 marked 17 for identification.) 18 Q. This is a patent which is discussed in the 19 specification of the patents in suit. 20 A. Yes. 21 Q. Does Braun know -- does Braun, the 22 company, know how this patent was located? 23 A. No, I just try to tell you we looked in 24 our files, we did not find any documents regarding</p>
<p style="text-align: right;">Page 46</p> <p>1 private practice. 2 Q. So was Mr. Wieske, was he involved with 3 the prosecution of either of the patents in suit? 4 A. No, I don't think, because as I said, he 5 was a specialist for electronics, and these patents 6 here are more mechanical stuff. 7 Q. Okay. 8 A. Can I return this, or -- 9 MS. WENDLANDT: We can start a pile 10 here (indicating). 11 MR. SHIMOTO: Just set it off to the 12 side, we won't use that again. 13 Q. If you'd look again at the deposition 14 notice, topics 6, 7 and 8, roughly. 15 A. Yes. 16 Q. The first topic is any patentability, 17 validity or prior art search, study or analysis 18 relating to the alleged inventions claimed or 19 disclosed in the asserted patents. 20 At the time in around 1993 to 1995, 21 did Braun conduct any prior art search related to 22 the patents in the suit? 23 A. I talked about this issue performed with 24 Uwe Sievers, and he checked our files and there's</p>	<p style="text-align: right;">Page 48</p> <p>1 prior art searches, and we have no idea how 2 Dieter Klauer, and he must have found the document 3 because it was his job, and no idea. 4 Q. Do you know if Fish &amp; Richardson conducted 5 any prior art searches on behalf of Braun related to 6 the patents in suit? 7 A. No, I don't think so because that must 8 have been in the prosecution files, we would have 9 instructed them, and normally, we do not instruct 10 our attorneys to conduct additional searches because 11 we have searches before the German patent office, 12 European patent office, Japanese and US patent 13 office and so why spend additional money when 14 there's no need. 15 Q. Do you know if Braun located any prior art 16 in searching -- well, do you know if Braun located 17 any prior art related to the patents in suit which 18 was not disclosed to the United States Patent and 19 Trademark Office? 20 A. Well, do you mean -- what do you mean in 21 the prior -- with the word prior art, prior art is 22 all -- all what is known before the filing date or 23 the date of invention. 24 Do you mean relevant pertinent prior</p>

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1 art, or -- because all is prior art, so --

2 Q. Yes, I guess I mean pertinent prior art.

3 A. Yes, no, what was your question again  
4 regarding pertinent prior art?

5 Q. Do you know if -- well, let me put it this  
6 way: Braun does not know today what searches  
7 Mr. Klauer would have performed related to what  
8 patent -- what prior art searches Mr. Klauer would  
9 have performed related to the patents in suit?

10 A. Well, we could not identify any documents  
11 which revealed that he conducted prior art searches,  
12 but he cited at the beginning this document, so he  
13 must have got it, anyway, and we don't  
14 know -- Braun, the company Braun does not know how  
15 he came to this document.

16 Q. And so the company Braun also does not  
17 know whether Mr. Klauer found any additional pieces  
18 of prior art which he did not disclose; is that  
19 correct?

20 MS. WENDLANDT: Objection.

21 A. I think if it's -- if Dieter Klauer would  
22 have thought it is -- it is pertinent prior art, he  
23 would have revealed it because that is -- that is a  
24 philosophy of Braun for the last at least 20 years

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1 when I'm with the company, we want to have valid  
2 patents and if he would find a pertinent prior art,  
3 we would not hide it, we would disclose it.

4 Q. So -- well, are you -- well, when you came  
5 to work at Braun, were you aware of the duty of  
6 disclosure in United States?

7 A. Yes.

8 Q. Do you know if Mr. Klauer was aware of the  
9 duty of disclosure in the United States?

10 A. Well, I think so, I think so, and he -- he  
11 made a lot of US cases, and usually, our US  
12 attorneys, Fish & Richardson, ask us at some point  
13 of time is there additional prior art out of foreign  
14 prosecutions or searches something, so I think he  
15 knew about that, yes.

16 Q. And am I correct that the duty of  
17 disclosure is different in the United States such  
18 that there is no corresponding duty Europe; correct?

19 MS. WENDLANDT: Objection.

20 A. Yes, so Germany and Europe, but the  
21 failing of disclosing pertinent prior art does --  
22 must not lead to deficiency with the patent, that's  
23 the -- the consequence is different.

24 Q. Do you know how -- well, does Braun know

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1 how Gebhard Braun would have received defendant's  
2 deposition Exhibit No. 105 during -- at the time  
3 that he was working on his -- that he filed his  
4 notice of invention?

5 A. He would have received this document, if  
6 he has received it, and I think he has received it,  
7 from Dieter Klauer.

8 Q. Am I correct, then, that Dieter Klauer was  
9 solely -- well, within Braun, the company, was  
10 Dieter Klauer solely responsible for the preparation  
11 and handling of the patents in suit?

12 A. Yes.

13 Q. Taking a step back to the German  
14 inventorship law that we were discussing, is it  
15 typical that people in the patent department ask an  
16 inventor whether anyone else assisted him with  
17 respect to a particular invention?

18 MS. WENDLANDT: Objection.

19 A. Well, it's not typical that the person in  
20 the patent department responsible for this area asks  
21 an inventor, but I know we have a written statement  
22 on the invention disclosure that -- that the  
23 inventor himself testifies that there are no  
24 additional inventors involved.

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1 Q. And what is the purpose of that statement?

2 A. Maybe to check or to guarantee that  
3 inventors compensation is paid to the right persons.

4 Q. And is it Braun's expectation that its  
5 employees will be honest when filling out notices of  
6 invention?

7 A. The expectation or the experience?

8 Q. Well, let's start out with the expectation  
9 first.

10 A. Yes, I think so.

11 Q. And what is the experience?

12 A. The experience confirms the expectations,  
13 there are only really few cases in the last -- there  
14 have been only a few cases in the last 20 years  
15 where there were some problems.

16 Q. And do you recall the few cases where  
17 there would have been a problem?

18 Well, I mean, there -- I guess one  
19 would be this case; is that correct?

20 A. No, this was not a problem to that point  
21 of time when we had to look closer to all the  
22 history and what happened because of this trial  
23 here, otherwise, nobody would have seen your  
24 problem, and for Braun, for the company Braun, he

13 (Pages 49 to 52)



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<p style="text-align: right;">Page 53</p> <p>1 has not a problem.</p> <p>2 Problems arise when one group files an</p> <p>3 invention disclosure and maybe another group which</p> <p>4 they worked partly together says well, we also</p> <p>5 invent this, so that's a problem, this is not a</p> <p>6 problem in this regard.</p> <p>7 Q. Okay. So problems arise when some other</p> <p>8 group basically holds out their hand and says we</p> <p>9 want money?</p> <p>10 A. Yes, or another inventor, not only group</p> <p>11 but single person.</p> <p>12 Q. Okay.</p> <p>13 A. But it's very -- it's seldom, so I had</p> <p>14 that two or three times, it's -- it's -- it works</p> <p>15 well.</p> <p>16 Q. All right. So both the expectation and</p> <p>17 the experience of Braun is its employees will be</p> <p>18 honest when filling out notices of inventions?</p> <p>19 A. Yes.</p> <p>20 Q. If you could look at topic No. 9, it</p> <p>21 states, The earliest date upon which Braun became</p> <p>22 aware of the number of US patents, do you see that?</p> <p>23 A. Yes.</p> <p>24 MR. SHIMOTO: Let's mark as deposition</p>	<p style="text-align: right;">Page 55</p> <p>1 earliest date that Braun became aware of US patent</p> <p>2 No. 1,868,904?</p> <p>3 A. No, I can't tell you.</p> <p>4 Q. What would you need to do to be able to</p> <p>5 tell me when Braun became aware of I'll start first</p> <p>6 US patent No. 1,868,904?</p> <p>7 A. Maybe I would have looked into the files</p> <p>8 of this US patent or the parallel files to evaluate</p> <p>9 where this document was cited.</p> <p>10 Was it cited by the examiner, by the</p> <p>11 German examiner, European examiner, US examiner,</p> <p>12 then maybe I could tell you what the</p> <p>13 earliest -- what the latest date, and the earliest</p> <p>14 date I can't tell you, that I don't know, that is</p> <p>15 very old reference from 1932, maybe Braun knew it in</p> <p>16 1934, I can't tell you.</p> <p>17 Q. Well, with respect to topic No. 9, what</p> <p>18 did you do to gain knowledge as to the earliest date</p> <p>19 upon which Braun would become aware of the listed</p> <p>20 patents?</p> <p>21 A. I went through or we went through these</p> <p>22 documents, and as far as I recall, this -- let me do</p> <p>23 it like that -- this document here (indicating)</p> <p>24 that's the document cited in the original</p>
<p style="text-align: right;">Page 54</p> <p>1 Exhibit No. 106 US patent No. 6,698,437, which is to</p> <p>2 list Mr. Hoesser a number of other individuals as</p> <p>3 inventors.</p> <p>4 MS. WENDLANDT: Jim, just to clarify,</p> <p>5 this is not one of the ones listed on topic 9.</p> <p>6 MR. SHIMOTO: No, no, no, I just have</p> <p>7 questions about it.</p> <p>8 MS. WENDLANDT: Okay.</p> <p>9 (Exhibit No. 106 marked</p> <p>10 for identification.)</p> <p>11 Q. Have you ever seen this document before?</p> <p>12 MS. WENDLANDT: Objection.</p> <p>13 A. I can't tell whether I've seen it</p> <p>14 because -- yes, okay, I can't tell you.</p> <p>15 Q. You have or have not seen it?</p> <p>16 A. I don't know.</p> <p>17 Q. Oh, okay. If you look under the</p> <p>18 references cited --</p> <p>19 A. Yes.</p> <p>20 Q. -- we can start with the first, there's</p> <p>21 listed one US patent No. 1,868,904 to Johnston, and</p> <p>22 that's one of the patents listed in topic No. 9?</p> <p>23 A. Yes.</p> <p>24 Q. Can you tell me, then, what was the</p>	<p style="text-align: right;">Page 56</p> <p>1 application.</p> <p>2 The 146 patent, that must be known</p> <p>3 somewhere around 1993, 1992 to Braun, and then we</p> <p>4 have here three documents, I think the 988486 and</p> <p>5 394, these were documents cited in the prosecution,</p> <p>6 and as far as I recall, the other documents have</p> <p>7 been cited during litigation, and that's -- and</p> <p>8 it's -- the question, the earliest date, the</p> <p>9 earliest date could be the date of publication of</p> <p>10 these documents, but I have no idea how I or how I</p> <p>11 speaking for Braun could have checked that.</p> <p>12 Q. Well, I guess one thing I would request,</p> <p>13 and maybe we -- well, we can't do it today, maybe we</p> <p>14 can follow up on this, if you could check into the</p> <p>15 prosecution of this particular patent and the files</p> <p>16 related to the prosecution of Mr. Hoesser's patents,</p> <p>17 perhaps then you would be able to ascertain at least</p> <p>18 a somewhat earlier day as to when Braun would have</p> <p>19 been aware as to some of the patents listed in this</p> <p>20 topic, but that said, sitting here today, aside from</p> <p>21 the patents where you can find dates, the rest of</p> <p>22 them, the answer is Braun doesn't know precisely the</p> <p>23 earliest date --</p> <p>24 A. Yes, yes.</p>

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<p style="text-align: right;">Page 57</p> <p>1 Q. -- when they knew of them.</p> <p>2 MS. WENDLANDT: And even with regard</p> <p>3 to the files of exhibit -- what is this, 106?</p> <p>4 MR. SHIMOTO: Mm-hmm.</p> <p>5 MS. WENDLANDT: That wouldn't answer</p> <p>6 the question of the earliest date, it would just</p> <p>7 give you, as I think Mr. Vorbeck has testified, the</p> <p>8 latest date upon which we knew.</p> <p>9 MR. SHIMOTO: Well, yes, I think a</p> <p>10 reasonable search is all you can ask.</p> <p>11 A. So what -- could you repeat exactly what</p> <p>12 you want me or us to do with regard to the</p> <p>13 prosecution history of this file of the 437 patent?</p> <p>14 Q. Well, for -- for these particular</p> <p>15 patents --</p> <p>16 A. These listed here?</p> <p>17 Q. Yes, well, listed in topic 9, not all of</p> <p>18 them, but the ones that are listed in topic 9 --</p> <p>19 A. Okay, mm-hmm.</p> <p>20 Q. -- look if there are files related to the</p> <p>21 prosecution of Mr. Hoesser's patents, I would suggest</p> <p>22 that might be a place where you would be able to</p> <p>23 determine dates when Braun would have been -- had</p> <p>24 gained knowledge as to those patents.</p>	<p style="text-align: right;">Page 59</p> <p>1 prosecution of the asserted patents. Do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. For the individuals covered by 37</p> <p>5 USC -- no, 37 C.F.R. section 1.56 (c) during the</p> <p>6 relevant time period, who was aware of</p> <p>7 Mr. Zeischke's thesis?</p> <p>8 A. I can -- if you look at the last page,</p> <p>9 there is -- Mr. Klauer mentioned in the A -- it's</p> <p>10 page 5277, B005277, last page on this document, and</p> <p>11 the -- on the third last line, Herr Klauer, Braun</p> <p>12 AG, that is Mr. Klauer, and so I -- this is --</p> <p>13 (The witness speaks in German.)</p> <p>14 A. That means with whom or what information</p> <p>15 got Mr. Zeischke from whom and he got here</p> <p>16 information from Mr. Klauer, so I believe since</p> <p>17 Mr. Klauer is cited here, that Mr. Klauer was aware</p> <p>18 of this document.</p> <p>19 (The interpreter speaks in German.)</p> <p>20 THE INTERPRETER: That is a source</p> <p>21 reference.</p> <p>22 MR. SHIMOTO: Yes, oh, I gotcha.</p> <p>23 Q. Did Braun ever attempt to pursue patent</p> <p>24 protection on Mr. Zieschke's work?</p>
<p style="text-align: right;">Page 58</p> <p>1 A. Okay, so the number -- the documents</p> <p>2 listed in question 9, which are also here on this</p> <p>3 (indicating) --</p> <p>4 Q. That is correct.</p> <p>5 A. Okay.</p> <p>6 Q. If you'd like a break now --</p> <p>7 A. No, I just want to make a note.</p> <p>8 Q. Okay.</p> <p>9 MS. WENDLANDT: I'll take notes on</p> <p>10 that because that's the official exhibit.</p> <p>11 MR. SHIMOTO: I'd like to mark as</p> <p>12 defendant's deposition Exhibit No. 107, I will just</p> <p>13 call -- it's a Braun 5220 to Braun 5277, it is the</p> <p>14 thesis of Stefan Zeischke.</p> <p>15 (Exhibit No. 107 marked</p> <p>16 for identification.)</p> <p>17 Q. I'd just like to ask you if you've ever</p> <p>18 seen this document before.</p> <p>19 A. Yes, during the preparation for this</p> <p>20 deposition.</p> <p>21 Q. Topic No. 10 is the knowledge of or</p> <p>22 awareness by any and all individuals covered by 37</p> <p>23 USC section 1.56 (c) for the asserted patents of</p> <p>24 Mr. Zeischke's thesis during or before the</p>	<p style="text-align: right;">Page 60</p> <p>1 MS. WENDLANDT: Objection.</p> <p>2 A. I don't think so. I could check that, but</p> <p>3 because the development went -- this is a cleaning</p> <p>4 station for a shaver involving brushes and the like,</p> <p>5 and the development, the actual development went in</p> <p>6 the totally other direction, so I cannot imagine,</p> <p>7 but if necessary, I will check that.</p> <p>8 Q. Well, how would you find out if --</p> <p>9 A. I would go into our computer system or I</p> <p>10 would go into Internet, look for inventor Zeischke</p> <p>11 and application Braun AG at the time, if I find</p> <p>12 something, I would look at it, and if I find</p> <p>13 nothing, I would leave it.</p> <p>14 Q. Is this thesis or the work embodied in the</p> <p>15 thesis the property of Braun?</p> <p>16 MS. WENDLANDT: Objection.</p> <p>17 A. No, it's -- it's the property of -- it</p> <p>18 would have been the property of Braun if Braun would</p> <p>19 have filed a patent application on it.</p> <p>20 Since then, you need to lead over the</p> <p>21 rights from the inventor, Mr. Zeischke, to Braun,</p> <p>22 but in case there is no patent application, the</p> <p>23 rights were with Mr. Zeischke.</p> <p>24 Q. Okay. So it would be necessary to</p>

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<p style="text-align: right;">Page 61</p> <p>1 determine whether Braun filed a patent application  2 to determine whether this is the property of Braun?  3 A. Yes, yes.  4 Q. If you could look at topic No. 11.  5 A. Yes.  6 Q. There it states, The knowledge of or  7 awareness by any and all individuals covered by 37  8 C.F.R. section 1.56 (c) for the asserted patents of  9 the ultrasonic cleaning device discussed at several  10 pages of Mr. Hoeser's deposition.  11 A. Mm-hmm.  12 Q. Do you see that?  13 A. Yes.  14 Q. Do you understand what is meant by the  15 ultrasonic cleaning device?  16 A. Well, I haven't seen it, but I understand  17 what an ultrasonic cleaning device is, and I don't  18 know the specialty wise, but what ultrasonic  19 cleaning device, I know about that.  20 Q. Well, are you aware that there is an  21 ultrasonic cleaning device used in the shaver  22 department currently at Braun?  23 A. No, I am not aware.  24 Q. So you have not seen this device?</p>	<p style="text-align: right;">Page 63</p> <p>1 answer to that.  2 A. Yes.  3 Q. Do you know whether Mr. Prah! knew about  4 the ultrasonic cleaning device?  5 A. I went through the prosecution files and  6 there's no correspondence regarding this ultrasonic  7 cleaning device, so I think Braun GmbH is of the  8 opinion that Eric Prah! did not know about that.  9 And further, we tried to reach  10 Eric Prah! and we got him, but he cannot remember  11 anything because it's a long time ago.  12 In the meantime, he has left  13 Fish &amp; Richardson, so it's -- yes, so that can be  14 answered as probably no, but we do not know it  15 certain, that's it.  16 Q. Do you know in general does Braun  17 encourage -- does Braun the company encourage its  18 employees to provide all relevant prior art of which  19 they know in connection with --  20 A. Yes, yes.  21 Q. Does Braun also typically inform -- well,  22 when a US patent application is filed, does Braun  23 the company typically inform its employees of the  24 duty to disclose all material information?</p>
<p style="text-align: right;">Page 62</p> <p>1 A. No, I haven't seen it.  2 Q. What did you do to prepare yourself to  3 answer questions regarding topic No. 11?  4 A. Yes, the -- the question is who of the  5 persons Mr. Klauer, Mr. Braun, Mr. Gebhard Braun and  6 Eric Prah!, these are the persons that have known  7 about that device, and I know from the depositions  8 of Mr. Hoeser cited here that Mr. Gebhard Braun knew  9 about it.  10 And in addition, I tried to reach  11 Mr. Hoeser, who is on vacation at the moment,  12 whether he could tell me since that is not clear  13 from the deposition whether Mr. Klauer knew about  14 it, that was unclear, but unfortunately, I could not  15 reach Mr. Hoeser up today.  16 I phoned him on his cell phone and his  17 company phone, but I couldn't get him, but maybe  18 that could be answered later on, if it is necessary.  19 Q. Well, I would like --  20 A. That Mr. Hoeser could tell whether  21 Mr. Klauer knew about that ultrasonic cleaning  22 device or not.  23 Q. That is a fairly important question which  24 I would like an answer to, if you could find an</p>	<p style="text-align: right;">Page 64</p> <p>1 MS. WENDLANDT: Objection.  2 A. At the time the US application is filed,  3 that's your question?  4 Q. Mm-hmm.  5 A. I don't think so, because in 99 percent,  6 before we had the German application, and there, we  7 would also, not having this -- the duty of  8 disclosure, file all of that relevant prior art.  9 So we ask already the inventors before  10 filing the German application to provide us with  11 relevant prior art and then when foreign  12 applications are filed, discussion is not posed any  13 more because we claim priority, and under normal  14 circumstances, the prior art is identical in all  15 prosecutions.  16 Maybe there might be a slight  17 difference due to the difference in the -- in the  18 law, in the US law and European or German law  19 regarding novelty, the definitions are different, so  20 there could be, in exceptional cases, document be a  21 prior art document in the US, but not in Europe, and  22 the other way around, but yes, we -- patents is also  23 mass production, and so we cannot put endless time  24 in all this things and so it is not done.</p>

16 (Pages 61 to 64)

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<p style="text-align: right;">Page 65</p> <p>1 Q. Okay. If you look at your deposition 2 notice that there's basically topics 13, 14, 15, 16, 3 17, 18, 19, there's a number of these which relate 4 to the translation. 5 A. Yes. 6 Q. And I know you talked with Mr. Sievers? 7 A. Yes, yes. 8 Q. In general, what document was provided 9 to -- well, with respect to the 328 patent, what 10 document was provided to Ms. Hubatsch for 11 translation? 12 A. Yes, so I give you the full information I 13 received this morning. 14 Mrs. Hubatsch got an order letter from 15 my secretary, Mrs. Cordes, that's an additional 16 question later on who the identity of the 17 individuals who provided the documents, so my 18 secretary Mrs. Cordes, sent to Mrs. Hubatsch a 19 letter, which the letter said, Please find attached 20 the German application documents. 21 Please translate them because we 22 intend to file in Japan, US and foreign filings. 23 In addition, this 146 patent is 24 enclosed for your reference, so Mrs. Hubatsch likes</p>	<p style="text-align: right;">Page 67</p> <p>1 MR. SHIMOTO: All right, I have it 2 wrong in the -- it's probably wrong in the dep 3 notice, so that's my own fault. 4 MS. WENDLANDT: Right. 5 Q. And I can mark all the exhibits, but are 6 you also aware that the claims and the counterpart 7 to the 328 patent changed from the original filing, 8 they were amended in October of 1994; correct? 9 A. No, I'm not aware, so maybe I will look on 10 the files. 11 Q. Sure. 12 A. So what you mean is the claims changed 13 from the original German language when being 14 translated to the English language? 15 Q. No, actually, the claims in the German 16 application were changed. 17 A. Mm-hmm, okay. 18 Q. So we'll mark as defendant's deposition 19 Exhibit No. 108 is the English version of Braun 1138 20 through 1145, let's mark as Braun -- excuse me -- 21 Rayovac deposition Exhibit No. 109 B00136 to B00146, 22 German version. 23 (Exhibits Nos. 108 and 109 24 marked for identification.)</p>
<p style="text-align: right;">Page 66</p> <p>1 it if we can provide her with prior art, with 2 original English language prior art to have -- have 3 the meaning of certain -- certain words to get that 4 better, so we provided to her this 146 patent, and 5 what is said, the application documents from the 6 German application, and then now Mr. Sievers 7 telephoned today or yesterday with Mrs. Hubatsch and 8 he said -- so she said she received -- she looked in 9 her files, she received the original application 10 documents, but there was inserted one page with the 11 evaluation of this French reference that was 12 inserted as page 3B or whatever, and she translated 13 all these papers. Is that clear? 14 So we sent her the 146 US document and 15 we sent her or Mrs. Cordes sent her application, 16 German language application documents which were, 17 beside one point, identical. 18 It was the original application that 19 was inserted on page 3B was the evaluation of this 20 French reference, these 20 lines or whatever. 21 MS. WENDLANDT: And if I could just 22 clarify, it's not the 146 patent, it's actually 23 reversed, it's the 416 patent. 24 A. Oh, that's -- that's --</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. SHIMOTO: I'll mark as defendant's 2 deposition Exhibit No. 110 B00126 to B0013 -- 135. 3 (Exhibit No. 110 marked 4 for identification.) 5 MR. SHIMOTO: And mark as defendant's 6 deposition Exhibit No. 111 the German version of 7 B00126 to B00135. 8 (Exhibit No. 111 marked 9 for identification.) 10 Q. If you could look at what I believe I 11 marked as the first one, so it would be -- it's the 12 document beginning October 24, 1994, which is 13 B00138. 14 A. Yes, yes, I see it, and actually, maybe 15 I've overviewed it in the prosecution files, but I 16 see here that Mr. Klauer filed a new claim with the 17 features of essentially claims 1, 7 and 7, I can see 18 it. 19 Q. Have you -- so sitting here now, you are 20 aware that the claims of the German application were 21 amended during prosecution in Germany? 22 A. Yes. 23 Q. Have you compared the claims of the US 328 24 patent application to the application, the German</p>

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<p style="text-align: right;">Page 69</p> <p>1 application, which was filed in the 328 application?</p> <p>2 A. No.</p> <p>3 Q. Want me to mark the 328? I know we've got</p> <p>4 a bunch of papers here. Do you understand the</p> <p>5 question?</p> <p>6 A. So you mean -- your question is whether</p> <p>7 the claim originally filed in the US application is</p> <p>8 identical to the claim of features 1, 7 and 9, our</p> <p>9 original claim, or what is the question?</p> <p>10 Q. Let me try and ask it an easier way. What</p> <p>11 claims did Mrs. Hubatsch translate when she was</p> <p>12 making the translation for the 328 patent</p> <p>13 application?</p> <p>14 MS. WENDLANDT: Objection.</p> <p>15 A. I thought she translated the original</p> <p>16 claim.</p> <p>17 Q. Okay. Do you know if the claims in the US</p> <p>18 patent application match up with the original claims</p> <p>19 or the amended claims?</p> <p>20 A. I'd have to look at it, so --</p> <p>21 Q. I apologize, but this is what we do, it's</p> <p>22 a lot of paper, there's no way around it.</p> <p>23 MR. SHIMOTO: I'd like to mark as</p> <p>24 defendant's deposition Exhibit No. 112 the</p>	<p style="text-align: right;">Page 71</p> <p>1 If I could direct your attention to</p> <p>2 B001103, there's claim 1, and I represent to you</p> <p>3 that is the original application claim.</p> <p>4 MS. WENDLANDT: It's a translation of</p> <p>5 it, right.</p> <p>6 MR. SHIMOTO: It's a translation of</p> <p>7 it; that is correct.</p> <p>8 (Exhibit No. 113 marked</p> <p>9 for identification.)</p> <p>10 (Pause.)</p> <p>11 A. Okay. Yes, there's a difference.</p> <p>12 Q. Do you know how Mrs. Hubatsch would have</p> <p>13 come to translate the amended application claim 1</p> <p>14 and not the original application of claim 1?</p> <p>15 A. Well, as I told you, Mrs. Hubatsch got,</p> <p>16 per this order letter, copies of the -- of documents</p> <p>17 which were named in that order letter above</p> <p>18 mentioned application, and it was this 4,402,238</p> <p>19 application, and there was added at least what we</p> <p>20 saw one -- one additional page, it's this evaluation</p> <p>21 of the prior art, and I have no idea, but that must</p> <p>22 have been -- or should be checked.</p> <p>23 Whether she also got the amended</p> <p>24 version of the claims, I don't know from the</p>
<p style="text-align: right;">Page 70</p> <p>1 prosecution history for US patent No. 5,711,328.</p> <p>2 (Exhibit No. 112 marked</p> <p>3 for identification.)</p> <p>4 Q. I believe you can find claim 1 in the</p> <p>5 application at B00169.</p> <p>6 A. 00169, yes, I have it, and that has to be</p> <p>7 prepared with the claim of Mr. Klauer's letter of</p> <p>8 October 24, 1994, that's right?</p> <p>9 Q. Yes.</p> <p>10 (Pause.)</p> <p>11 A. So claim 1, according to B00169, is</p> <p>12 practically identical to this claim (indicating).</p> <p>13 Q. Have you seen the original claim 1?</p> <p>14 A. No. Have you --</p> <p>15 Q. I do have it, I can show it to you. This</p> <p>16 will be in -- wait a minute, I have to give you</p> <p>17 another document, mark them all.</p> <p>18 Let's mark as defendant's deposition</p> <p>19 Exhibit No. 113 a document bearing the Bates range</p> <p>20 B001097 to B001114, it's a German unexamined patent</p> <p>21 application.</p> <p>22 A. Okay.</p> <p>23 Q. I didn't hand you something -- okay,</p> <p>24 sorry, too much stuff going on here.</p>	<p style="text-align: right;">Page 72</p> <p>1 timing -- just a moment -- oh, look (indicating).</p> <p>2 This revised version of the claim, so</p> <p>3 that limited claim was filed in October 24 and as</p> <p>4 far as I recall, October -- the order letter to</p> <p>5 Mrs. Hubatsch was sent in November 21, so one month</p> <p>6 later might be that she also got the revised version</p> <p>7 of the claims.</p> <p>8 Q. Does this order letter still exist to</p> <p>9 which you refer?</p> <p>10 A. Well, I have to check that when I'm back,</p> <p>11 I didn't see it here in the files and I -- I will</p> <p>12 check that.</p> <p>13 Q. Okay. But you believe that Mrs. Hubatsch</p> <p>14 would have received documents in approximately</p> <p>15 November 1994?</p> <p>16 A. Yes.</p> <p>17 Q. How do you know that?</p> <p>18 A. Because Uwe told me there was a term -- a</p> <p>19 handwritten notice that she wanted to have the</p> <p>20 translation to one month later to December 21,</p> <p>21 that's what he told me.</p> <p>22 Q. So did the notation say that she needed a</p> <p>23 month to complete the translation?</p> <p>24 A. Yes, yes, and so I had in my mind the 21st</p>

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1 of December, I think, so -- but we will check that  
 2 and we will provide --  
 3 Q. Did you -- did you ask -- Mr. Sievers  
 4 spoke with Mrs. Hubatsch; correct?  
 5 A. Yes.  
 6 Q. Did he ask her whether she literally  
 7 translated the original application or she changed  
 8 the application in any way?  
 9 MS. WENDLANDT: Objection.  
 10 A. I know Mrs. Hubatsch was still working for  
 11 us, and I'm certain she would never change without  
 12 any instructions from Braun the text and she would  
 13 never certify if there would have been changes that  
 14 this is a translation of the original.  
 15 I think she got from Braun from  
 16 Mrs. Cordes for whatever reasons, we have to check  
 17 that, documents which she believed to be the  
 18 original documents and she translated them and  
 19 certified them.  
 20 So I think that was the way how it  
 21 went, but I'm not sure, and from our file copies, we  
 22 cannot -- because what we -- was a clause to this  
 23 order letter does not exist as a copy, we do not put  
 24 the paper we send to Mrs. Hubatsch an additional

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1 copy to our files just to save the paper and that  
 2 not be too big.  
 3 So she has to clarify or she -- she  
 4 might be in a position to clarify what she received  
 5 and what I did not see up to now is this amended  
 6 claim, I only saw the -- the -- the --  
 7 (The witness talks  
 8 with the interpreter.)  
 9 THE INTERPRETER: The insertion.  
 10 A. -- the insertion of this additional prior  
 11 art reference, the French reference, and that's the  
 12 only difference.  
 13 Q. Okay.  
 14 A. And so I -- we only looked for this issue,  
 15 and that was -- that can be explained she got from  
 16 Braun GmbH -- Braun AG at that time, she got papers  
 17 which had to be translated where this insert was  
 18 added.  
 19 Q. So she had been instructed to add that  
 20 insert?  
 21 A. I can't tell you, I can't tell you.  
 22 Q. Okay.  
 23 A. Because that's really unusual. Normally,  
 24 we file the -- the application as it is also

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1 foreign, or there is some prior art, but I -- I -- I  
 2 have at the moment no -- no -- I can't explain that,  
 3 that was the word that I want, what I was looking  
 4 for, but we will recheck that.  
 5 Maybe we will find in her files what  
 6 we actually sent her. I don't know whether she kept  
 7 that for 12 years or how long it is.  
 8 Q. Well, I guess, you know, based upon at  
 9 least the insert in claim 1, Braun is aware  
 10 that -- what the original application and the  
 11 translation in the 328 patent application, there are  
 12 differences between them; is that correct?  
 13 A. Yes, but it's also not a -- I think not a  
 14 must to file a US application it's identical to the  
 15 German application, that it's -- there is no rule  
 16 which it's only question whether you can claim  
 17 priority or not.  
 18 So if it is a different invention,  
 19 then you cannot claim priority and you do not have  
 20 this additional 12 months' grace period, that's all,  
 21 it's all -- but I think that's --  
 22 Q. Okay, well, let's take it in pieces.  
 23 A. Yes.  
 24 Q. Braun is aware that there is a difference

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1 between what the German paper files and the  
 2 translation to the US application?  
 3 A. Yes, yes, yes.  
 4 Q. And Braun does not know why, sitting here  
 5 today, Braun does not know how that the differences  
 6 occurred?  
 7 A. Well, we know that the papers sent to  
 8 Mrs. Hubatsch had an additional page was this  
 9 evaluation of the French reference, and why -- and I  
 10 also see that Mrs. Cordes, she is assistant to  
 11 secretary, will not put this paper on her own into  
 12 the application, that's how it's translated by, so  
 13 she must have been advised by Mr. Klauer to do so,  
 14 but for what reasons and whether she also put other  
 15 claims to the -- to the -- in German language to the  
 16 stuff which should be translated by Mrs. Hubatsch, I  
 17 don't know, but I didn't see this problem until now  
 18 you put me on it, so I have to check that.  
 19 Q. Okay. Are you aware that during the  
 20 prosecution of the 328 patent, that the patent  
 21 office said that there wasn't an English translation  
 22 file for the German original; correct?  
 23 A. Yes, yes, notice of missing parts.  
 24 Q. Yes, and are you also aware that

19 (Pages 73 to 76)



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1 Braun -- well, Fish & Richardson on behalf of Braun  
2 filed a document saying, Well, yes, we had in fact  
3 filed a translation of the German original?

4 A. Yes.

5 Q. And sitting here today, is it Braun's  
6 position that the paper filed by Fish & Richardson  
7 is accurate?

8 MS. WENDLANDT: Objection.

9 A. Well, I think everybody at that point of  
10 time thought the English language US application is  
11 a word by word translation of the US application.

12 The one person who should not believe  
13 that could have been Mr. Klauer because he, for  
14 whatever reasons, put something in it, but, for  
15 instance, Fish & Richardson will not check whether  
16 the translation is identical to the German original  
17 so they have a certified translation, I think they  
18 rely on it, and so Fish & Richardson, they believed  
19 it is a true and certified translation and relied  
20 upon it, and maybe Mr. Klauer could have said  
21 something to that, but --

22 Q. Well, did Mr. Klauer -- do you know if  
23 Mr. Klauer discussed with Fish & Richardson the  
24 notice to file missing parts of the application?

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1 A. No, I don't think so, because actually I  
2 think Fish & Richardson saw in their files or in  
3 some documents got -- they received back from the US  
4 PTO that English translation application was filed  
5 and the US PTO told we didn't receive it, so they  
6 put the thing on it and said well, look here, we  
7 filed the English language translation, and that was  
8 it, and then the US PTO agreed, I think, and that it  
9 was -- the petition was granted.

10 Q. With respect to the amendment made to the  
11 original German counterpart application, that was  
12 done by Mr. Klauer; correct, there's a number of  
13 documents here --

14 A. You mean the German --

15 Q. Yes, the German counterpart to the 328  
16 patent.

17 A. So the first application.

18 Q. Yes, yes.

19 A. Yes, they were made by Mr. Klauer, yes.

20 Q. So Mr. Klauer was aware that the German  
21 counterpart application had changed; correct?

22 A. Yes, I think so, yes.

23 Q. And Mr. Klauer provided the documents to  
24 Mrs. Hubatsch; correct?

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1 MS. WENDLANDT: Objection.

2 Q. Or -- or -- let me rephrase --

3 A. His secretary did it.

4 Q. Do you know whether Mr. Klauer interacted  
5 with Mrs. Hubatsch in terms of what her  
6 responsibilities were?

7 MS. WENDLANDT: Objection.

8 A. Can you repeat your question?

9 Q. Sure. Did Mr. Klauer provide instructions  
10 to Mrs. Hubatsch as to the scope of her  
11 responsibilities?

12 A. What scope of responsibilities?

13 Q. Let me withdraw that question and just  
14 restate it.

15 Did Mr. Klauer tell Mrs. Hubatsch what  
16 she was expected to do with the documents which had  
17 been transmitted to her?

18 A. She should translate them from German to  
19 English language, that was the purpose why we  
20 involved or why she was involved in this.

21 Q. And how did Fish & Richardson receive the  
22 translation from Mrs. Hubatsch?

23 A. The -- I can't tell you how it went this  
24 way, but normally, at that time, there was no

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1 e-mail, we had no e-mail, and I think it was  
2 unusual, it was all sent by paper.

3 So we send it, the German text,  
4 whatever it was, to Mrs. Hubatsch, Mrs. Hubatsch  
5 made the translations, send it -- the English text  
6 back, maybe it was a diskette, so that you have a  
7 word document, but that was it, and then we -- we  
8 put all the stuff for the US application and the  
9 Japanese application together and send it to  
10 Fish & Richardson and Japanese attorneys, that's how  
11 it worked.

12 Q. And that would have been Mr. Klauer and in  
13 the case of the asserted patents, that he would have  
14 then sent those materials to Fish & Richardson?

15 A. Well, it's a -- to put all the documents,  
16 it's a package of paper like this (indicating) to  
17 file for an application, and priority document and  
18 translation, prior art, if there is any, so it's a  
19 lot of paper.

20 This is put together by the  
21 assistants. Then you have an order letter, please  
22 file it in Japan or in the US, and two persons,  
23 Mr. Klauer and me or Mr. Klauer and any other sign  
24 it and it's sent away, but the -- the -- putting

20 (Pages 77 to 80)

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1 together these documents is done by the assistant  
 2 and nobody will go through all the papers and read  
 3 each and every word to look whether it's all correct  
 4 or not, it's translated and certified and then it  
 5 runs, goes off to the foreign -- foreign law firms.  
 6 MS. WENDLANDT: Jim, if this is a good  
 7 time for a break --  
 8 MR. SHIMOTO: Yes, this is a good time  
 9 for a break, why don't we take -- I could use one.  
 10 MS. WENDLANDT: Want to take five  
 11 minutes?  
 12 MR. SHIMOTO: Yes.  
 13 THE VIDEOGRAPHER: Going off the  
 14 record, this marks the end of videotape No. 1 in the  
 15 deposition of Wolfgang Vorbeck, the time is  
 16 11:12 a.m.  
 17 (Discussion held off the record.)  
 18 THE VIDEOGRAPHER: We're back on the  
 19 record, this marks the beginning of videotape No. 2  
 20 in the deposition of Wolfgang Vorbeck, the time is  
 21 11:27.  
 22 Q. If you could direct your attention first  
 23 to topic No. 12 and also topic No. 20 in the  
 24 30(b)(6) deposition notice, and what did you do to

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1 make -- prepare yourself to answer questions  
 2 regarding those two topics?  
 3 A. Well, as I told you, we tried to -- to  
 4 talk with Eric Prahm on this issue, he cannot  
 5 remember, and so I looked at -- at the files. There  
 6 is one page regarding this telephone interview, it's  
 7 minutes of telephone conference or whatever, and the  
 8 substance is that during this telephone conference,  
 9 the claim was amended by putting I think the concave  
 10 feature to the cradle structure and that there's a  
 11 hole or whatever where the liquid can pour out of  
 12 the cradle. That's the substance of this telephone  
 13 interview.  
 14 Q. See if you can look to the 328 file  
 15 history, do you have that, page 366, item B --  
 16 A. Yes.  
 17 Q. -- on the second sentence, it states, re  
 18 claim 1, the patent to Mekiney and Hilliker and are  
 19 cited disclosing a cleaning device comprising a  
 20 cradle, 12 and 6 respectively?  
 21 A. Yes, yes.  
 22 Q. And then after that -- well, my first  
 23 question is: Did Braun disagree with the examiner  
 24 that Mike Mekiney disclosed a cradle?

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1 A. Well, I think so. If you look at the  
 2 answer of -- to this communication of the patent  
 3 office -- oh, no after that, I think -- am I right?  
 4 There was the telephone interview.  
 5 Q. That's correct.  
 6 A. Yes, so let me put it in this way:  
 7 The -- this --  
 8 Q. The telephone interview is at page 374.  
 9 A. Yes, yes, I know, but -- so this letter  
 10 from the US patent office says under B, and you're  
 11 right, at claims 1, 7, 8, 9 and so on are rejected  
 12 because of several reasons, and then they say under  
 13 D, claims 2 to 6 are objected to as being dependent  
 14 upon a rejected claim, but would be allowable if  
 15 rewritten.  
 16 And since Braun did not rewrite the  
 17 claims as recommended here, so we did not agree with  
 18 the opinion, the claims were amended in another  
 19 kind. Do you understand what I want to say?  
 20 Q. Sure.  
 21 A. So that if you would have agreed with this  
 22 statement, we would have drafted or put the claims  
 23 in the form as recommended here by the examiner to  
 24 get notice of allowance, but we didn't.

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1 Q. Okay. Well, you had the telephone  
 2 interview; correct, if you look at page 374;  
 3 correct?  
 4 A. Yes.  
 5 Q. And it states there that Hilliker and  
 6 Mekiney were discussed; is that correct?  
 7 A. Yes.  
 8 Q. And then underneath there, it says it was  
 9 noted that claim 1 would be amended to include the  
 10 shape of the cradle concave and the drainage port at  
 11 the base of the concave cradle and to include the  
 12 bracket?  
 13 A. Yes, yes.  
 14 Q. Why was it agreed that claim 1 would be  
 15 amended in that manner?  
 16 MS. WENDLANDT: Objection.  
 17 A. I can't tell you because I only saw this  
 18 was the third or fourth objection by the examiner,  
 19 really long examination procedure as compared to  
 20 usual examination procedures, maybe they wanted --  
 21 (The witness speaks  
 22 with the interpreter.)  
 23 THE INTERPRETER: In vague  
 24 context -- I mean, if you can translate this

21 (Pages 81 to 84)

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<p style="text-align: right;">Page 85</p> <p>1 literally, this would be to open the knot, knot, 2 K-N-O-T. 3 A. The examiner always had objections, then 4 the applicant reacted by amended claims or some 5 arguments and the examiner objected again, then the 6 applicant meant -- and that went three or four 7 times, so what I would do in such circumstances 8 would speak with the examiner because I see maybe in 9 writing will not come across, so that was the 10 reason, but I think Braun did not agree with the 11 statement in this last -- last letter from the US 12 PTO that the both references, Mekiney and the other 13 one, would -- would have novelty or -- on claim 1 14 was obvious for the combination of these two 15 references, that was not agreed, otherwise, we would 16 have accepted the recommendation of the examiner to 17 rewrite the claims as suggested. 18 Q. During this telephone interview, did Braun 19 tell the examiner that Mekiney did not disclose a 20 cradle structure? 21 MS. WENDLANDT: Objection. 22 A. I don't know, I was not aware, Mr. Klauer 23 was not aware, this telephone interview was run by 24 Mrs. P. Kristal, she is or was, I don't know, an</p>	<p style="text-align: right;">Page 87</p> <p>1 knowledge as to what Braun may have told the 2 examiner about the Mekiney reference? 3 A. Yes. 4 Q. So beyond what is stated here in the 5 prosecution history, Braun has no additional 6 knowledge to add? 7 A. No, no. 8 Q. And again, could you just tell me what 9 Braun did to gain knowledge with respect to the 10 subject or what you did to gain knowledge with 11 respect to the subject matter we've been discussing? 12 A. Yes, this is a detail of the US 13 prosecution of a Braun case, and the person who 14 could give me additional information besides what 15 can be found in the files would be Mr. Klauer, 16 that's not possible, or that could be Mr. Eric Prah 17 or this Mrs. -- this other attorney. 18 And we ask Eric Prah and he couldn't 19 say more than or he could not remember anything, and 20 that's it, so where could I get additional knowledge 21 from? 22 Q. Did you talk with Mrs. Kristal? 23 A. No, I didn't. 24 Q. Do you know if Mrs. Kristal still works at</p>
<p style="text-align: right;">Page 86</p> <p>1 attorney Fish &amp; Richardson, and what they discussed, 2 we have no indications, and that's all here what we 3 have. 4 Q. Well did you talk with Mrs. Kristal? 5 A. I can't -- I did not talk with her because 6 if one would have talked, it must have been 7 Mr. Klauer, but I don't know. 8 Q. If you look to page 382, at the top 9 sentence -- at the top in the top sentence, it 10 states, Mekiney's merely teaches a rectangular tank 11 12, not a cradle structure having a concave surface, 12 do you see that? 13 A. Yes, yes. 14 Q. During the telephone interview, did Braun, 15 by and through its attorneys, tell the examiner that 16 it was going to change the cradle structure 17 limitation to include a concave surface to get 18 around the Mekiney reference? 19 MS. WENDLANDT: Objection. 20 A. I can't tell you. For Braun, I have no 21 information why this amendment was made, I can't 22 tell you anything about that. 23 Q. Well, sitting here today speaking on 24 behalf of Braun, is it correct that you have no</p>	<p style="text-align: right;">Page 88</p> <p>1 Fish &amp; Richardson? 2 A. I don't know. 3 Q. If you'd look at topic 21, which is any 4 and all investigations made by an individual covered 5 by 37 C.F.R. 1.56 (c) during prosecution of the 6 asserted patents regarding one, the level of skill 7 in the art, and two, whether particular prior art 8 was analogous or nonanalogous art. Do you see that? 9 A. Yes. 10 Q. And what did you do to prepare yourself to 11 answer questions regarding this topic? 12 A. Again, I went through files and that's it. 13 The persons here, Mr. Braun, Gebhard Braun 14 definitely gave no input in this regard, he is no 15 patent expert, he will not know what prior art is or 16 whether prior art will be analogous or not 17 analogous, and Mr. Klauer cannot give any more 18 information and Eric Prah does not remember. 19 So I read the files and I saw that 20 there were some discussions regarding special 21 documents, whether they are analogous or 22 nonanalogous prior art, that's -- that's -- these 23 are the investigations, Braun GmbH knows about. 24 Q. Well, you know, and I can mark the file</p>

22 (Pages 85 to 88)

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<p style="text-align: right;">Page 89</p> <p>1 history, but you have seen the arguments made with  2 respect that this reference is not analogous and  3 that reference is not analogous?  4 A. Yes, yes.  5 Q. How did Braun come make the determination  6 that a particular reference cited by the examiner  7 was analogous or not analogous or --  8 A. Well, that -- that can be read in the  9 prosecution history. It was prior art directed  10 to -- I have to look at it, but -- let's take the  11 prior art, then.  12 Q. Sure.  13 A. And we can -- the arguments --  14 Q. We can mark this one as an example, mark  15 as defendant's deposition Exhibit No. 114 US patent  16 No. 3,890,988, the Lee patent.  17 A. Mm-hmm.  18 Q. This is one of the references that Braun  19 argued -- if you'd like to see the place in  20 the -- would you like to see the prosecution history  21 where that was argued?  22 A. Yes, please.  23 Q. We'll mark as defendant's deposition  24 Exhibit No. 115 US patent No. 5,649,556.</p>	<p style="text-align: right;">Page 91</p> <p>1 documents or could he have combined them, it's not  2 sufficient that he could have combined them,  3 according to European perspective, but that he would  4 have combined them.  5 He must have an indication to put  6 the -- both documents together, and you call that  7 here, according to US patent law, analogous or  8 nonanalogous prior art, and that's -- that's special  9 US law and therefore we have our US patent attorneys  10 who deal with this issue, so we are not the experts  11 regarding US law, we would -- we would argue before  12 the European patent office or the German patent  13 office, Mr. Klauer, for instance, but not -- this  14 was done by Fish &amp; Richardson.  15 Q. Okay. So -- I guess so now I guess that  16 we have that in mind, you are aware that there were  17 several places where the argument was made  18 regarding nonanalogous art --  19 A. No, this was only example, the European  20 patent, not parallel to this one, but to the other  21 US patent, we had nothing like that, and I think  22 here too we got relative broad protection.  23 It was just an example generally  24 speaking, this problem of analogous and nonanalogous</p>
<p style="text-align: right;">Page 90</p> <p>1 (Exhibits Nos. 114 and 115  2 marked for identification.)  3 Q. Probably find that at B0095, or B95.  4 A. Okay.  5 (Pause.)  6 A. Well, here the --  7 MS. WENDLANDT: Well, let's wait for a  8 question.  9 A. Okay, a question?  10 Q. Sure. You see it -- you see that there's  11 an argument regarding the Lee patent; correct?  12 A. Yes.  13 Q. And my question is: Before making this  14 statement to the United States Patent and Trademark  15 Office, what investigation did Braun conduct to  16 determine that the Lee patent was, in fact,  17 nonanalogous art?  18 A. Braun served its law investigations, that  19 is the objective or the task of the US attorneys, so  20 they look -- this -- this problem analogous or  21 nonanalogous prior art, that's special US issue, and  22 in, for instance, before the European patent office  23 you call that similar problem the would could test,  24 so would a person have combined two prior art</p>	<p style="text-align: right;">Page 92</p> <p>1 prior art is special US feature for US patent law  2 and US patent prosecution.  3 In Europe, we call it another way,  4 round would could test and there are maybe some  5 similar, but also other approaches to it, and so I  6 wanted to set forth that such -- such questions had  7 to be answered by the competent US lawyers, not by  8 Mr. Klauer or whoever else was involved, this is a  9 special problem related to US law, and therefore, we  10 take our -- our experts in US law, and these are the  11 outside US attorneys.  12 Q. Okay.  13 A. So that's what I wanted to say.  14 Q. Yes. So just let me make sure I'm clear.  15 So when arguments were made with respect to the  16 patents regarding analogous or nonanalogous art,  17 Fish &amp; Richardson was not asking engineers at Braun  18 whether they considered the art pertinent or not?  19 A. Yes, yes.  20 Q. I'd like to mark as defendant's deposition  21 Exhibit No. 116 a document bearing the Bates range  22 B1069 to B1073, it also has the English and German.  23 I'd like to ask you if you've ever  24 seen this document before?</p>

23 (Pages 89 to 92)



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1 A. Let me just --  
 2 Q. No problem.  
 3 A. The first page I saw, but --  
 4 (Exhibit No. 116 marked  
 5 for identification.)  
 6 (Pause.)  
 7 A. This is the invention disclosure regarding  
 8 the 581, that's the -- this (indicating) patent, I  
 9 think, the 328 patent, but I cannot exactly remember  
 10 whether I saw it with these remarks here, so these  
 11 handwritten remarks.  
 12 Q. Just so the first preliminary question, do  
 13 you recognize that handwriting?  
 14 A. Yes.  
 15 Q. Whose handwriting?  
 16 A. It's Dieter Klauer.  
 17 Q. After Mr. Klauer's passed away, did his  
 18 files come to reside with any Braun employee?  
 19 A. What means to reside?  
 20 Q. Or were his files transferred to any Braun  
 21 employee?  
 22 A. Yes, to Uwe Sievers.  
 23 Q. Do you know if this document with  
 24 Mr. Klauer's handwriting would have come from his

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1 original files?  
 2 A. Once more, please.  
 3 Q. Do you know if defendant's deposition  
 4 Exhibit No. 116, the German version of it, at least,  
 5 would have come from Mr. Klauer's original files?  
 6 A. Do you mean that he wrote that?  
 7 Q. Well, when -- you understand that Braun  
 8 collected documents and they were produced to  
 9 Rayovac in connection with this litigation?  
 10 A. Yes.  
 11 Q. Would this have been one of the documents  
 12 that now is with Mr. Sievers, but would have  
 13 originally been with Mr. Klauer?  
 14 A. Look, our files look similar like yours,  
 15 we have --  
 16 (The witness speaks  
 17 with the interpreter.)  
 18 THE INTERPRETER: We have a  
 19 classification device, you can call it files, a  
 20 filing system.  
 21 A. No, no -- yes, and we put -- therein is  
 22 the invention disclosure, if you talk about the  
 23 German file, the invention disclosure.  
 24 There is some other stuff in it, and

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1 there is also the prosecution history of the German  
 2 file in it.  
 3 So we have another file there, we have  
 4 the US file and another European one, which splits  
 5 later on, and several French and so on, and  
 6 all -- and these files are in a cupboard.  
 7 (The witness speaks  
 8 with the interpreter.)  
 9 THE INTERPRETER: In a filing  
 10 cupboard.  
 11 A. Yes, and when Dieter Klauer went away, his  
 12 successor was Uwe Sievers and he was responsible for  
 13 something, so he had to deal with these files, it  
 14 was not so that we had this invention disclosure and  
 15 was on Dieter's table and it was forwarded to --  
 16 Q. I understand.  
 17 A. So it's -- and you must know at that time,  
 18 this file was similar to a hundred other files, we  
 19 had no litigation, nothing, so why should we put  
 20 special -- special attendance just to this file.  
 21 Q. Okay.  
 22 A. We have hundreds of patents on shavers,  
 23 so --  
 24 Q. I believe we were discussing, if you look,

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1 at the signature line --  
 2 A. Yes.  
 3 Q. -- is what we were discussing earlier, I  
 4 believe it states in English, roughly translated, It  
 5 is hereby assured that all information was provided  
 6 to the best of my knowledge and that no additional  
 7 inventors participated in creation of the invention?  
 8 A. Yes.  
 9 Q. That's the statement that we were  
 10 discussing earlier?  
 11 A. Yes.  
 12 Q. And it's been your expectation and  
 13 experience that Braun employees are generally honest  
 14 when signing that?  
 15 A. Yes, yes.  
 16 Q. Do you see next to that oath, there is a  
 17 place, or there's in the chart there, where it says  
 18 share an invention percentage?  
 19 A. Here, yes, yes.  
 20 Q. Yes, what is the purpose of that entry or  
 21 that column?  
 22 A. That's only for calculation of inventors  
 23 compensation.  
 24 Q. Okay. So say, for example, someone

24 (Pages 93 to 96)

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1 contributes 90 percent to an invention and  
 2 someone --  
 3 A. The other 10, so he gets 90 percent and  
 4 the other, 10 percent. There are other factors, but  
 5 it depends whether you are in a high level position  
 6 or low level position, it's not expected from you if  
 7 you're in a lower level position to make big  
 8 inventions, so you will get more money in you are a  
 9 worker or whatever than the head of R and D, so  
 10 there are -- but one point is also someone who  
 11 contributes more to the invention gets more.  
 12 Q. I know you'd mentioned earlier that Braun  
 13 has contemplated compensating Dr. Pahl; is that  
 14 correct?  
 15 A. Contemplated?  
 16 (The witness speaks  
 17 with the interpreter.)  
 18 A. Yes.  
 19 Q. Has there been any thought given to what  
 20 percentage of compensation is due to Dr. Pahl and  
 21 what percentage is due to Mr. Braun going forward?  
 22 A. No, we -- look, the intention of Dr. Pahl  
 23 was, by not being cited here, not to get any money,  
 24 but now due to all this litigation, Braun was forced

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1 to put him on the inventors list in the US  
 2 prosecution.  
 3 And I think -- I don't know how that  
 4 will come out, but I think Mr. Pahl will get some  
 5 lump sum payment or whatever jut to compensate him  
 6 for all the things he had to suffer here, for  
 7 instance, his deposition and all that stuff.  
 8 Q. That's not that bad, is it?  
 9 A. Yes, but, see, it's like that, so he never  
 10 said that he wants to have compensation. That was  
 11 one of his main reasons not to be put here on the  
 12 list, so he does not now approach, as Braun says,  
 13 Hey, now, I'm coinventor, I want to have  
 14 compensation, that's not what he is doing, so it's  
 15 on the -- or fair -- fair --  
 16 (The witness speaks  
 17 with the interpreter.)  
 18 THE INTERPRETER: It's a fair gesture.  
 19 A. -- fair gesture by Braun to just give him  
 20 some compensation for all this stuff which is going  
 21 on.  
 22 Q. In that regard, conversely, has Mr. Braun  
 23 come to Braun and said, You've given me too much,  
 24 I'd like to get some back?

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1 MS. WENDLANDT: Objection.  
 2 A. Who?  
 3 Q. Mr. Braun, Gebhard Braun, has he --  
 4 A. No, no inventor would say that.  
 5 Q. If you see there, it says, and one of the  
 6 topics is that it's hereby assured that all  
 7 information is provided with that oath, roughly  
 8 speaking, that signature block where it's on -- here  
 9 on the front, the --  
 10 A. Yes, yes, yes.  
 11 Q. That roughly corresponds with an oath in  
 12 German application; is that correct?  
 13 A. Well, it's not an oath, we would not call  
 14 it an oath, it's just a signature.  
 15 (The witness speaks  
 16 with the interpreter.)  
 17 Q. When you say it's just a signature, what  
 18 is the purpose of that in German applications?  
 19 MS. WENDLANDT: Objection.  
 20 A. You mean this other form?  
 21 Q. Yes.  
 22 A. That's not a Braun form, it's a standard  
 23 form which you can get or which you just use to fill  
 24 out the inventorship, and that was not produced by

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1 Braun, so I don't know what the purpose of this  
 2 other form, you don't have it here, I don't think  
 3 so...  
 4 Q. No. Well, if you lie regarding  
 5 inventorship in Germany --  
 6 A. Yes.  
 7 Q. -- what is the effect of that?  
 8 MS. WENDLANDT: Objection.  
 9 A. No, no effect, regarding -- no effect  
 10 regarding the validity of the patent.  
 11 Q. Well, is there any affect?  
 12 MS. WENDLANDT: Objection.  
 13 A. Well, there is an effect regarding  
 14 inventor's compensation, for instance, but you can  
 15 put the wrong inventors on a German application, the  
 16 application is not invalid for these reasons, or the  
 17 patent, the later patent.  
 18 Q. So there is -- well, how is inventor's  
 19 compensation -- to the extent you know, how is  
 20 inventor's compensation affected if one inventor  
 21 lies about inventorship?  
 22 A. Well, if he -- if he actually is not  
 23 inventor, the amount he receives, that's -- that's  
 24 what's the problem, then, or if some others are

25 (Pages 97 to 100)



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<p style="text-align: right;">Page 101</p> <p>1 not -- not cited, the -- they do not receive  2 inventorship, so that's a problem -- not  3 inventorship, inventor's compensation.  4 Q. So at least there is a reason for naming  5 the inventors under German patent law?  6 MS. WENDLANDT: Objection.  7 A. Not patent law, inventor's compensation.  8 Q. Okay. Well, there is a reason to  9 ascertain the correct inventors in the German law?  10 A. Yes, yes.  11 Q. And one of the -- pile of stuff here --  12 topic No. 24, it's any and all training, instruction  13 or other guidance given to Braun employees prior to  14 or during the prosecution of the asserted patents  15 regarding invention applications and disclosure of  16 all individuals who participated in the development  17 of an invention. Do you see that?  18 A. Yes.  19 Q. Are Braun employees given any  20 instruction -- well, let me ask this question in a  21 more concrete form.  22 Invention applications such as what we  23 were discussing before, does the patent department  24 provide them any assistance or any instruction</p>	<p style="text-align: right;">Page 103</p> <p>1 behalf of Braun, not yourself.  2 A. Yes, yes, I told you at that time, we had  3 not these regular seminars like we have now, since  4 three, two, three, two, four years, and only in  5 cases where problems arose, the patent department  6 talk with these group of persons who had problems  7 regarding inventorship.  8 And so from the files, and in case  9 there would have been problems, Dietrich Klauer  10 would have talked with both of them or one of them  11 and I know about -- I know nothing about that.  12 Q. Well, for example, in connection with the  13 328 patent prosecution, and we can get to the page,  14 but are you aware that Mr. Braun signed both in  15 connection with the filing of this patent?  16 A. You mean the declaration?  17 Q. Yes, B0026 or B261.  18 A. Yes.  19 Q. Do you know if anyone discussed this  20 declaration with Mr. Braun?  21 A. No, I don't.  22 Q. Do you know how it came to -- do you know  23 how this document came to be in Mr. Braun's  24 possession when he signed it?</p>
<p style="text-align: right;">Page 102</p> <p>1 regarding --  2 A. Well, at that time, I don't think so. In  3 our days, we have yearly or two yearly, not two  4 yearly, every two years a seminar, and especially  5 new attorneys attend these seminars and there is  6 also something said about how to -- to fill out this  7 invention disclosure, who might be coinventor, but  8 at that time, we had not regularly information for  9 the inventors, only in such cases as I told you  10 some -- an hour ago, if there were problems,  11 problems arising between one group and an additional  12 inventor that he was not cited, and we talk with all  13 these individuals and then they have to agree what  14 happens, but it was not regular communication, only  15 if in the past, problems arose, then we talk with  16 these problem groups, I shouldn't say it like that.  17 Q. Well, do you know, for topic No. 25, it  18 talks about training or guidance given to  19 Gebhard Braun or Dietrich Pahl.  20 Do you know if either of them ever  21 received any training or guidance regarding inventor  22 or inventorship or invention applications?  23 A. I can't tell that, I don't know.  24 Q. Well, and I'm asking you to speak on</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I don't know that, but I know how these  2 documents regularly come into -- or how they are  3 signed, the secretary assistant calls the person,  4 the inventor, he comes down to the patent  5 department, signs it and goes back to his office, so  6 that's how it works.  7 Q. Well, do you, and just regularly, do you  8 ask -- well, is it the practice of Braun's patent  9 department to ask employees to read documents such  10 as this declaration before they are signed?  11 A. Yes, as -- as an attorney or the patent  12 attorney, I would -- would say to every person that  13 this person should read the document before signs  14 it, not only German language declaration, but any  15 document.  16 But you have to see that this was  17 approximately one year or more after the first  18 filing in Germany, and they are -- practically all  19 was done.  20 The -- Mr. Gebhard Braun was the only  21 inventor for the German language application in  22 Germany, why shouldn't he be the inventor for the  23 practically identical English language US  24 application?</p>

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1 Q. Well --

2 A. The problems were before.

3 Q. Well, you -- do you know if -- do you  
4 typically tell Braun employees that this document is  
5 being signed under penalty of perjury?6 A. No, I don't think so, that we tell it, and  
7 where, is this penalty? Oh, I see it here, you can  
8 be punished by paying money or imprisonment, okay, I  
9 don't think we -- we --

10 Q. I mean, do --

11 A. No, in this special event, I can't tell  
12 it, but I think the persons read it or read it not  
13 and sign it.14 Q. Topic No. 20 -- well, let me, I guess, to  
15 finish up this thought, do you know if any attorneys  
16 in the United States at Fish & Richardson would have  
17 talked to Mr. Braun to discuss with him the oath  
18 that he signed in connection with the prosecution of  
19 the 328 patent?

20 A. No, I don't know that.

21 Q. Did you ask Mr. Pahl that?

22 A. Well, Mr. Eric Pahl was asked whether he  
23 can remember anything, and he said no, so we -- the  
24 answer is: We did not ask Mr. Pahl regarding this

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1 special issue of whether he took contact with the  
2 inventor and -- and gave him assistance or showed  
3 him what to do or what not to do.4 But I would say if an outside attorney  
5 would ring up an internal inventor without my  
6 knowledge, we -- I think that is not the best way to  
7 cooperate.8 Q. I understand. For topic No. 26, so it's  
9 any and all investigations made by Braun regarding  
10 the inventorship for the asserted patents and their  
11 German equivalents, what investigations were made by  
12 Braun?13 A. Well, we have only one investigation in  
14 this regard, and that's the questionnaire which is  
15 sent to the head of the inventor or the group of  
16 inventors, so here in this regard to Dieter Pahl, so  
17 there is a questionnaire, you have it there.

18 Q. Yes.

19 A. And that is regularly done with each and  
20 any invention disclosure.21 MR. SHIMOTO: Let's mark this as  
22 defendant Exhibit No. 117 Braun 00861.

23 A. Thanks.

24 Q. I didn't give you mine, did I, with

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1 handwriting on it? Is there any handwriting on  
2 there? No.3 (Exhibit No. 117 marked  
4 for identification.)5 Q. Do you recognize what has been marked as  
6 defendant's deposition Exhibit No. 117?

7 A. This.

8 Q. Yes, that document. And what is it?

9 A. Well, it's a translation -- it's a  
10 questionnaire, a written questionnaire which asks  
11 some persons high up in the management, mostly R and  
12 D people, sometimes also business management people  
13 like Gilbert Greaves to evaluate the invention  
14 disclosure regarding certain aspects.15 So whether it's a good solution for  
16 the problems or whether they agree to file a patent  
17 application, and also whether -- do you consider the  
18 inventor details to be correct, so that's -- that's  
19 this questionnaire which we have.

20 Q. Is this a standard document from Braun?

21 A. Yes, yes, we send it for each and any  
22 invention disclosure to the respective persons.23 Q. And this is the one investigation that  
24 Braun performed regarding inventorship?

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1 A. Yes, yes.

2 Q. Do you expect that Braun employees will be  
3 honest when filling out this investigation form?

4 A. Yes, I -- I expect that.

5 Q. And have you had any problems with people  
6 being dishonest in filling out these forms?

7 MS. WENDLANDT: Objection.

8 Q. Let me put -- ask -- with respect to 6.1  
9 where it says, Do you consider the inventor details  
10 to be correct, have you had problems in the past  
11 with individuals being dishonest with respect to the  
12 answer to 6.1?

13 MS. WENDLANDT: Objection.

14 A. You mean -- you mean the people who judge  
15 here?

16 Q. Yes.

17 A. No, no, never.

18 Q. So it's been your experience that people  
19 in general, when they read invention  
20 applications --21 A. Yes, these are -- in practice, these are  
22 directors of the company, very high level, and  
23 why -- so -- why should they do -- do  
24 wrong -- wrong -- make wrong statements here?

27 (Pages 105 to 108)

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<p style="text-align: right;">Page 109</p> <p>1 That's -- so I would not suspect -- expect that.  2 Q. And other than this investigation here,  3 there was no investigation, initial investigation  4 done into inventorship?  5 A. No, no, no.  6 Q. And is the reason that no additional  7 investigation was performed that the patent  8 department felt it could trust both this  9 investigation and the invention application filed by  10 Mr. Braun?  11 A. Once more, please.  12 Q. Yes. Was the reason that no additional  13 investigation into inventorship was performed by the  14 patent department was that patent -- well,  15 maybe this is becoming too many double negatives.  16 Is it correct that the patent  17 department performed no additional investigations  18 into inventorship because it believed that it could  19 trust what was represented in defendant's deposition  20 Exhibit No. 117 and in Mr. Braun's invention  21 application?  22 A. Yes.  23 Q. For topic No. 28, I think we have -- so  24 it's the identity of the external lawyer referenced</p>	<p style="text-align: right;">Page 111</p> <p>1 tell us who cannot is Mr. Klauer.  2 A. Yes, exactly.  3 Q. I understand. I'd like to mark as  4 defendant's deposition Exhibit No. 118, I apologize  5 for all the paper, the declaration which you filed  6 in July 8, 2004 with the court here in  7 Massachusetts, just if you recognize this document?  8 (Exhibit No. 118 marked  9 for identification.)  10 A. Yes, it seems to be my signature.  11 Q. Under paragraph 3, it states, I recently  12 learned that Dr. Dietrich Pahl made significant  13 contributions to the inventions disclosed in the  14 patents in suit, et cetera. My question is: How  15 did you learn of Dr. Pahl's contributions?  16 MS. WENDLANDT: I'm going to instruct  17 the witness not to answer to the extent it requires  18 communication between your lawyers and yourself to  19 be revealed, so to the extent you can answer that  20 without revealing any conversations between you and  21 myself and Mr. Patton, you can answer.  22 THE WITNESS: What -- what I  23 experienced during this discovery procedure without  24 talking to you, that can be --</p>
<p style="text-align: right;">Page 110</p> <p>1 by Gebhard Braun in his deposition at several pages?  2 A. Yes, yes.  3 Q. We have an interrogatory response  4 regarding that which states it's possibly  5 Mr. Sartorius?  6 A. Yes, it's Peter Sartorius, I think so,  7 too.  8 Q. And do you know whether Mr. Sartorius  9 would have worked with Dr. Pahl and Gebhard Braun in  10 preparing the application, patent applications for  11 the shaver cleaning system?  12 A. I -- I don't know that.  13 Q. And for topic No. 27, it's Mr. Klauer's  14 understanding of inventorship law in the  15 United States and Germany during the prosecution of  16 the asserted patents, I'll ask first to Braun's  17 knowledge, what was Mr. Klauer's understanding of  18 inventorship law in the United States during the  19 prosecution of the patents in suit?  20 A. I couldn't really tell you. He knew  21 something about it, but what his personal  22 understanding of the inventorship law in the  23 United States was, I can't tell you.  24 Q. So basically the only person who could</p>	<p style="text-align: right;">Page 112</p> <p>1 MS. WENDLANDT: That's right, yes.  2 A. So this litigation forced Braun to go  3 deeper into the history of this -- these two US  4 patents than you usually go to history, and we all  5 thought that Gebhard Braun is the sole inventor, all  6 documents showed that.  7 And when we evaluated the history of  8 the development of the clean and charge device, we  9 found this sample, this model built by the French  10 engineers, and we also learned that this was, what  11 Mr. Braun said, the starting point of his work, and  12 then we thought or we came to the conclusion if  13 Gebhard Braun started or his beginning of his R and  14 D work was this model and this model showed already  15 several features of the claims, that he could not  16 have been the sole inventor.  17 And so we came to the conclusion that  18 Mr. or Dr. Pahl, Dietrich Pahl should have been  19 coinventor at least coinventor or coinventor,  20 because he -- or the model was built on his  21 instructions, on his behalf, that was why we came to  22 the conclusion that Gebhard Braun could not be the  23 sole inventor of this model.  24 Q. Who -- I'm not asking you what lawyers</p>

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<p style="text-align: right;">Page 113</p> <p>1 would have said to you.  2 Who at Braun provided you the  3 information that you just have been discussing  4 regarding the prototype and Dr. Pahl's original  5 work?  6 A. The information that the starting point of  7 the work of Gebhard Braun was this prototype came  8 from Gebhard Braun.  9 Q. Oh, so Mr. Braun informed you that --  10 A. No, we asked him. Mr. Hoerer made a  11 timeline history of all that stuff, and at some  12 point of this timeline, we had this sample,  13 this -- and then we asked where was the starting  14 point of Mr. Hoerer, and he said, Well, I started  15 with a sample, and so it came up that we personally,  16 Uwe Sievers and me, draw the conclusion that he  17 cannot be the sole inventor.  18 MR. SHIMOTO: Let me mark as  19 deposition Exhibit No. 119 B0243 to B0247.  20 (Exhibit No. 119 marked  21 for identification.)  22 Q. Is this the timeline that you were  23 referring to?  24 A. No, I'm referring here to this first</p>	<p style="text-align: right;">Page 115</p> <p>1 And then I don't know when that was,  2 Mr. Braun, Gebhard Braun told -- told us at the  3 beginning, Dieter Pahl gave me this prototype, and  4 then -- then the conclusion that is --  5 (The witness speaks  6 with the interpreter.)  7 THE INTERPRETER: It was -- it was a  8 healthy sense.  9 A. Just natural thinking that he could not be  10 the sole inventor, that was the reason why we  11 started digging, looking, asking Mr. Pahl, before we  12 had no -- no --  13 (The witness speaks  14 with the interpreter.)  15 THE INTERPRETER: No motivation.  16 A. No motivation to talk to Mr. Pahl, so  17 that's how it came up.  18 Q. Were you surprised when you learned  19 about --  20 A. Yes, we were surprised, and this  21 is -- it's an exceptional case.  22 Q. I mean, did you ask -- at that time, did  23 you ask Mr. Braun why -- why he had not -- why  24 Dr. Paul was not ever named --</p>
<p style="text-align: right;">Page 114</p> <p>1 prototype here (indicating).  2 I'm not sure whether it's this one the  3 picture's on, but we had this prototype where we had  4 this cradle structure the shaver head was put in,  5 there was a blower, I think also a heating unit, and  6 all the features of this device were also  7 incorporated in some claims of the 328 or of one  8 patent.  9 Q. Yes.  10 A. That, and in addition, Gebhard Braun said,  11 When I started working on the clean and charge  12 device, this was what maybe Dieter Pahl gave me  13 then, and so that --  14 Q. Let me see if I understand the chronology.  15 So first Mr. Hoerer provided a  16 timeline to you; is that correct, or --  17 A. Well, he was developing that timeline, and  18 we saw the first time this prototype, let me say how  19 long is the litigation running now?  20 Two years ago or one and a half years  21 ago, I personally saw this prototype the first time  22 and Uwe Sievers as well and we were -- Uwe more than  23 we was deeply involved in all collecting all these  24 documents and that stuff together.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Well, that came later, and I thought you  2 made the deposition with Dieter Pahl and Mr. Braun  3 and they explained that, I think, deeply.  4 Q. Yes. When -- when exactly did you, or not  5 exactly. When roughly did you learn of -- or learn  6 of the prototype from Mr. Braun?  7 A. Well, it was in connection with the  8 discovery here, and maybe it's -- oh, good, I made  9 this declaration a year ago, approximately, in July  10 (indicating), so maybe months or somewhat earlier  11 when we got -- yes.  12 MR. SHIMOTO: I'd like to mark as  13 defendant's deposition Exhibit No. 120 Braun's  14 answers to then Remington's now Rayovac's first set  15 of interrogatories.  16 (Exhibit No. 120 marked  17 for identification.)  18 Q. I'd just like to direct you to the answer  19 to interrogatory No. 2.  20 Take whatever time you need to, I  21 don't know if you've seen this before.  22 A. No.  23 Q. Interrogatory 2 asked questions regarding  24 conception --</p>

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<p style="text-align: right;">Page 117</p> <p>1 A. Just a moment.</p> <p>2 Q. Yes, sure, take your time, page 4.</p> <p>3 Interrogatory No. 2 asks questions regarding</p> <p>4 conception dates for claims.</p> <p>5 A. Yes.</p> <p>6 Q. And then there are answers given or</p> <p>7 answers provided by Braun, and at the end, you were</p> <p>8 listed as someone with knowledge regarding the</p> <p>9 conception dates provided in the answer.</p> <p>10 (Pause.)</p> <p>11 A. Yes. Okay. What's your question?</p> <p>12 Q. My question is: What knowledge do you</p> <p>13 have regarding the conception dates provided in</p> <p>14 response to interrogatory No. 2?</p> <p>15 A. I think I'm listed here falsely, so I</p> <p>16 could only give any information which I got in the</p> <p>17 last one year, one and a half year with regard to</p> <p>18 this litigation, but at that time all this actually</p> <p>19 happened, I have no access to this information, so I</p> <p>20 was not involved in it, only the last one or one and</p> <p>21 a half years along the litigation is running.</p> <p>22 Q. That's fine, I understand.</p> <p>23 MR. SHIMOTO: I'll just mark these all</p> <p>24 now.</p>	<p style="text-align: right;">Page 119</p> <p>1 Braun prior to it being produced to Rayovac?</p> <p>2 A. It was in the possession of Dieter Pahl, I</p> <p>3 think this is the one of the prototype that I</p> <p>4 mentioned.</p> <p>5 Q. So this -- this document was provided by</p> <p>6 Dietrich Pahl?</p> <p>7 A. Yes, I think so, maybe it was also in</p> <p>8 other files, but again, what do you -- when it was</p> <p>9 produced one and a half years ago --</p> <p>10 Q. Yes, well, let me represent -- the</p> <p>11 questions I'm asking is when people went out and got</p> <p>12 these documents, when the lawyers came and collected</p> <p>13 these documents --</p> <p>14 A. Yes, in what files they were?</p> <p>15 Q. Yes, were they found. I'll represent to</p> <p>16 you that I asked Dr. Pahl if he provided this</p> <p>17 document in connection with this litigation, and he</p> <p>18 said no, so my question is: Who at Braun had this</p> <p>19 document when it was given to the lawyers?</p> <p>20 A. I cannot -- I don't know, and I guess</p> <p>21 maybe Mr. Hoeser.</p> <p>22 Q. So this document was -- well, did you</p> <p>23 perform any investigation to determine who would</p> <p>24 have had this document?</p>
<p style="text-align: right;">Page 118</p> <p>1 A. Who put me in here?</p> <p>2 MS. WENDLANDT: Just to clarify, I</p> <p>3 think your name was put in there because you are the</p> <p>4 repository of H.D. Klauer's knowledge in the patent</p> <p>5 history.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. SHIMOTO: Okay, would I like to</p> <p>8 mark as defendant's deposition Exhibit No. 121</p> <p>9 documents bearing the Bates range B004615 to</p> <p>10 B004617, both German and English.</p> <p>11 (Exhibit No. 121 marked</p> <p>12 for identification.)</p> <p>13 MR. SHIMOTO: I'll also mark -- this</p> <p>14 is a big document -- a document bearing the Bates</p> <p>15 No. B1064 as defendant's deposition Exhibit No. 122,</p> <p>16 a very large schematic.</p> <p>17 A. Yes.</p> <p>18 (Exhibit No. 122 marked</p> <p>19 for identification.)</p> <p>20 Q. Okay. Starting with the -- I'll start</p> <p>21 with the schematics so we can get that out of your</p> <p>22 way, B0164.</p> <p>23 A. Okay.</p> <p>24 Q. My question is: Who had this document at</p>	<p style="text-align: right;">Page 120</p> <p>1 A. No, I didn't do that. I thought it was</p> <p>2 from Mr. Pahl, but now when you're telling me it's</p> <p>3 not from him, well, he -- then it must be</p> <p>4 Mr. Hoeser, the person who should have all of this</p> <p>5 material in his files.</p> <p>6 Q. Okay. So I take it, then, that a copy of</p> <p>7 this document was not at the -- within the patent</p> <p>8 department's files?</p> <p>9 A. No, no, I don't think so.</p> <p>10 Q. Are you sure whether this was in the</p> <p>11 patent department's files?</p> <p>12 A. In the patent department's files regarding</p> <p>13 the prosecution, or -- or anything else? We have</p> <p>14 checked our files.</p> <p>15 The prosecution files are all with</p> <p>16 you, and I think this document is not in the</p> <p>17 prosecution files, and we have no additional files.</p> <p>18 We could have prior art searches of</p> <p>19 files at that time, and it was not there because we</p> <p>20 had no files at that time regarding prior art</p> <p>21 searches, so I can say it was not in the patent</p> <p>22 department files.</p> <p>23 Q. Okay. With respect to -- well, now you</p> <p>24 can put this away (indicating).</p>

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<p style="text-align: right;">Page 121</p> <p>1 (Pause.)</p> <p>2 Q. B004615, it's the memo, I believe, from</p> <p>3 Mr. Braun and Mr. Smetana to --</p> <p>4 A. 4615, mm-hmm, yes.</p> <p>5 Q. These are stapled together as actually two</p> <p>6 memos.</p> <p>7 A. Yes.</p> <p>8 Q. From whose -- and I'm talking now about in</p> <p>9 connection with this litigation, from who -- from</p> <p>10 whom was the Smetana-Braun memo collected?</p> <p>11 A. I think it was collected from Mr. Smetana,</p> <p>12 he -- I know that he -- he was also at the</p> <p>13 deposition with you, and he is -- he -- he wrote</p> <p>14 this -- this -- this memo, and so I think it was</p> <p>15 collected from him.</p> <p>16 Q. Did you ask him?</p> <p>17 A. No, I didn't.</p> <p>18 Q. Then I'll represent to you as well that I</p> <p>19 asked Mr. Smetana at his deposition if he presented</p> <p>20 this memo to the lawyers, and he said no,</p> <p>21 so -- but -- do you know if this would have been in</p> <p>22 the files of the patent department?</p> <p>23 A. No, I don't think so because who, in</p> <p>24 addition to Mr. Braun and Mr. Smetana, this memo was</p>	<p style="text-align: right;">Page 123</p> <p>1 (Discussion held off the record.)</p> <p>2 THE VIDEOGRAPHER: One moment. We're</p> <p>3 back on the record, the time is 12:36.</p> <p>4 MR. SHIMOTO: With the exception</p> <p>5 of -- I would like -- well, there was a few</p> <p>6 questions I had to ask that we were unable to ask,</p> <p>7 but with the proviso that somehow we can work out</p> <p>8 some way to get answers to those, I have no further</p> <p>9 questions for you today, thank you.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 MS. WENDLANDT: I have no questions.</p> <p>12 THE VIDEOGRAPHER: This marks the end</p> <p>13 of videotape No. 2 in the deposition of</p> <p>14 Wolfgang Vorbeck, we're going off the record, the</p> <p>15 time is 12:36.</p> <p>16 (Whereupon the deposition</p> <p>17 concluded at 12:36 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 122</p> <p>1 disputed to Dr. Pahl and Dr. Jung and not to the</p> <p>2 patent department, and regarding the contents, I</p> <p>3 see -- I see no issues why it should have been</p> <p>4 transferred to the patent department.</p> <p>5 Q. With respect to the next page, which is</p> <p>6 B004617 --</p> <p>7 A. Yes.</p> <p>8 Q. -- have you seen this document before?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know from whose files this document</p> <p>11 was collected in connection with this litigation?</p> <p>12 A. It's from the files of Mr. Hoerer.</p> <p>13 Q. So I take it this document also would not</p> <p>14 have been with the patent department?</p> <p>15 A. No.</p> <p>16 (Pause.)</p> <p>17 A. It's -- it's for VDE, that is something</p> <p>18 corresponding to the underwriter laboratory here in</p> <p>19 the US, why -- you cannot put all the stuff to</p> <p>20 patent department, so --</p> <p>21 MR. SHIMOTO: Let me take a</p> <p>22 five-minute break, I think we might be finished up.</p> <p>23 THE VIDEOGRAPHER: Going off the</p> <p>24 record, the time is 12:31 p.m.</p>	<p style="text-align: right;">Page 124</p> <p>1 Commonwealth of Massachusetts</p> <p>2 Suffolk, ss.</p> <p>3</p> <p>4 I, Melissa Z. Comins, Certified Shorthand</p> <p>5 Reporter No. 132293 and Registered Professional</p> <p>6 Reporter and Notary Public in and for the</p> <p>7 Commonwealth of Massachusetts, do hereby certify</p> <p>8 that WOLFGANG VORBECK, the witness whose deposition</p> <p>9 is hereinbefore set forth, was duly sworn by me and</p> <p>10 that such deposition is a true record of the</p> <p>11 testimony given by the witness.</p> <p>12 I further certify that I am neither related to</p> <p>13 or employed by any of the parties in or counsel to</p> <p>14 this action, nor am I financially interested in the</p> <p>15 outcome of this action.</p> <p>16 In witness whereof, I have hereunto set my hand</p> <p>17 and seal this 22nd day of August 2005.</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Notary Public</p> <p>22 CSR # 132293</p> <p>23 My commission expires:</p> <p>24 June 13, 2008</p>

31 (Pages 121 to 124)



COMMONWEALTH OF MASSACHUSETTS

Signed under the pains and penalties of perjury  
this            day of            , 2005.

WOLFGANG VORBECK

## ERRATA SHEET

PAGE	LINE	REASON FOR CORRECTION
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[illegible]

SIGNATURE/DATE: \_\_\_\_\_